

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

Original Application No.587 of 2017

Date of Order: 27.09.2018

Between:

K.G. Ajaya Kumar, S/o. Govindan Nair,
Aged 56 years, Group C (Class III) Employee,
H. No. 23-229, R.K. Nagar, Malkajgiri,
Hyderabad – 500 047, Telangana State.

... Applicant

And

1. Union of India, represented by
The General Manager,
South Central Railway,
Rail Nilayam, 3rd Floor, Secunderabad – 500025.
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 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.)

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

The OA is filed against the order issued by the respondents No. A/PN/BZA/34589 dated 07.09.2016 and dt.12.09.2016 issued by the 4th respondent.

2. Brief facts of the case are that the applicant while working in Grade I scale in the respondent Railways applied for working in the Railway Tel Corporation of India Limited, a PSU of the Railways, on deputation basis. He was selected for the said Corporation and after five years, resigned from South Central Railway on technical basis on 01.10.2010 and got absorbed in the Rail Tel Corporation of India Limited on 02.10.2010. Consequent to his resignation, the applicant was granted pension duly fixing basic and dearness relief. On 07.09.2016 the 4th respondent issued the impugned notice to the Bank authorities vide letter No. A/PN/BZA/34589 advising the later to recover the dearness relief drawn from 01.10.2010 to 31.07.2015 and remit the same to the Railways. Hence, the grievance and the OA.

3. The contention of the applicant is that the recovery is made after a lapse of 6 years. He is a Group C employee and he is fully covered by the judgment of the Hon'ble Supreme Court in the State of Punjab & Others Vs. Rafiq Masih (White Washer) etc. in CA No. 11527 of 2014. He also states that he neither misguided the respondents nor misrepresented any facts. The recoveries after a long period of time would put him to difficulties on the family and financial front for no fault of his.

4. The respondents state that the fact of allowing dearness relief was realized later and that an instruction was given by the Railway Board vide RBA No. 94/2016 dated 08.12.2016 wherein they have stated that Vigilance Directorate has received references about dearness relief on pension being paid to certain re-employed pensioners not eligible to draw the same as no endorsement towards non-admissibility of dearness relief was made on the PPOs. Hence, it was

advised to conduct a check and recover the excess paid amount against the guidelines. Therefore, the recovery.

5. Learned counsel for the respondents has emphatically stressed on this letter and that the recovery has to be done as per the guidelines quoted above.

Heard learned counsel for both sides and perused the documents.

6. As seen from the records placed before this Tribunal, there is no undertaking given by the applicant for recovery of any excess amount paid to him while calculating and disbursing pension. Besides, he is a Group C employee for whom recovery has been effected nearly after six years for the error committed by the respondents in not endorsing properly on the Pension Payment Order. Neither the applicant has misrepresented the facts nor did he misguide the respondents on the issue. Hon'ble Supreme Court in Rafiq Masih (supra) has 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.

Besides this Tribunal disposed similar OA Nos. 368/2013, 893/2013, 1308/13, 1432/2013 and 722/2014 on 27.07.2015 allowing the plea of the

applicants based on merits of the case and based on the judgment of the Hon'ble Supreme Court cited above and the order of Hon'ble Ernakulam Bench of the Tribunal in OA No. 180/00859/2016 dt. 14.03.2017. Hence, the case in question is fully covered by the judgments stated above. The law is well settled in this matter. Therefore, the OA succeeds.

7. In the result, the OA is allowed. The respondents are directed to consider repaying the amount recovered from the applicant pursuant to the impugned orders, within a period of two months from the date of receipt of copy of this order. No order as to costs.

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

(Dictated in open court)
Dated, the 27th day of September, 2018

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