

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

Original Application No.020/00670/2017

Date of Order: 28.09.2018

Between:

K. Sambasiva Rao, S/o. K. Nagabhushanam,
Aged 57 years, Occ: Retd. ACRI/VRR/BZA,
Group C Employee, Door No. 31-15-104,
Ratnamamba Street, Classic Towers (D),
Moghalarajapuram, Vijayawada – 520 010,
Andhra Pradesh 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,
Andhra Pradesh State.
5. The Senior Divisional Personnel Officer
South Central Railway,
Vijayawada Division, Vijayawada,
Andhra Pradesh State.

... Respondents

Counsel for the Applicants ... 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.)}

This OA is filed being aggrieved by the recovery from pension of the applicant after he technically resigned from the respondents organization.

2. The applicant is from South Central Railway who was working as Assistant Catering Inspector in the Catering Department, which was abolished and consequently, he was absorbed in IRCTC. He was granted pension by the respondent organization and thereafter, recovery from his pension was ordered by the respondent organization for wrong calculation in granting pension. The applicant in OA is challenging such recovery ordered vide impugned Orders No. A/PN/BZA/36904 dt. 10.07.2017 issued by the 4th respondent.

3. Brief facts are that the applicant was working in Catering Department of the respondent organization. Consequent on abolition of the catering department in the South Central Railway, due to catering functions being delegated to IRCTC, the employees were initially placed at the disposal of the IRCTC on deemed deputation enmasse. Thereafter, the applicant rendered technical resignation to the respondent organization and got absorbed in IRCTC. The respondent organisation accordingly granted him pension fixing basic and dearness relief thereon. After a period of about 10 years, the respondent organisation ordered recovery from the pension towards the alleged excess payment of dearness relief based on a Railway Board letter dt. 11.04.2016.

4. When the applicant approached this Tribunal, an interim order of staying the recovery till the disposal of the OA was granted.

5. The applicant's contention is that he did not misguide or misrepresent the facts to respondent organization to gain any undue benefit. Moreover, the applicant was not put to notice before ordering the proposed recovery. The applicant belongs to Group C category and is pensioner of the respondent organization. He also asserts that he did not commit any fraud and that the recovery after a long period of time would put him to undue hardship as the amount received by him has already been put to use. The applicant also states that it was not his wish to go to IRCTC, but he was forced by the respondents organization to go on deemed deputation with IRCTC and thereafter, having found that returning to the respondent organization would be difficult, he opted for absorption after technically resigning from the respondent organization.

6. The respondents have filed reply.

7. The respondents argue that the OA is not maintainable since the applicant is challenging the internal communication addressed to the Bank about overpayment. DA/DR have been drawn twice for the applicants namely, by IRCTC and the respondent organization. As per the Railway Board letter No. F(E)III/99/PN/I/21 dated 05.08.1999, such drawal is irregular. The respondents also contend that this discrepancy was pointed out during audit objection and therefore, recovery was ordered. They also state that the applicant after technically resigning from the respondent organization has joined IRCTC and therefore, he is not put to any financial hardship as claimed by him.

8. Heard learned counsel for both sides and perused the documents.

9. Learned counsel for the applicant has argued that the error of calculation of pension lies with the respondent organization. The applicant has not contributed to such an error either by misguiding or misrepresenting the facts to the respondents organization. Ordering for recovery of Rs.5,09,537/- after a long period of time would necessarily cause financial hardship as the amount received has already been consumed for one purpose or the other. Even the recovery ordered was without notice which is too harsh. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in State of Punjab & ors Vs. Rafiq Masih (White Washer) Etc., in Civil Appeal No. 11527/2014 and according this judgment, no such recovery can be made by the respondent organization.

10. Learned counsel for the respondents vehemently opposed the argument of the learned counsel for the applicant on the basis that Railway Board guidelines vide letter No. F(E)III/99/PN/I/21 dated 05.08.1999, No.2012/AC-II/21/Misc. Matters dated 11.04.2016 have to be implemented. Moreover, there was an audit objection wherein it was pointed out that drawal of dearness relief by two organizations is not permissible. Therefore, they had to inevitably recover. It is also not true that the applicant is put to financial hardship since he has been reemployed in IRCTC.

11. As seen from the facts narrated above, recovery has been ordered from pension of the applicant after a period of about 10 years. The applicant is Group C employee. He has not been put on notice before ordering recovery. Any recovery which is sudden and substantial would undoubtedly impact the financial status of any individual. A due process and the law applicable is to be

followed. The law has been well-settled in view of the judgment of the Hon'ble Supreme in Rafiq Masih (supra) 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.*

12. The applicant is squarely covered by the above observations of the Hon'ble Supreme Court. Therefore, the law is well settled. This Tribunal has also issued similar orders vide OA Nos. 368/2013, 893/2013, 1308/13, 1432/2013 and 722/2014 on 27.07.2015. Recently, in OA No. 176/2018, vide order dt. 14.08.2018, this Tribunal has allowed similar plea by following the judgment of the Hon'ble Supreme Court in Rafiq Masih supra and the order of the Ernakulam bench in OA No.859/2016, dt. 14.03.2017. Therefore, as directed by the Hon'ble Supreme Court in Sub-Inspector Rooplal vs Lt. Governor, (2000) 1 SCC 644, this Tribunal respectfully abides by the judgments of the Hon'ble Supreme Court and also the Coordinate Bench of Ernakulam. The respondents have also not produced any undertaking given by the applicant to the effect that any excess payment made to him is liable to be recovered.

13. In view of the merits of the case and the judgments cited supra, this Tribunal arrives at the conclusion that the present OA filed by the applicant

succeeds. The OA is accordingly allowed. The impugned order addressed to the bank is quashed. The respondents are therefore directed to refund the amount already recovered, if any, pursuant to the impugned order, within a period of three months from the date of receipt of this order.

14. It is left open to the respondents to fix responsibility on those who have committed the error in fixing the pension wrongly thereby allowing excess payment to the applicants resulting in causing financial loss to the respondent organisation.

15. No order as to costs.

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

(Dictated in open court)
Dated, the 28th day of September, 2018

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