

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 332/00010/2017

This, the 23rd day of April, 2018

Hon'ble Mr. Justice V.C. Gupta, Member (Judicial)

Umesh Parashar, aged about 60 years, son of Late Kailash Chandra Sharma, Retired Senior Section Engineer (Electric), Charbagh, Lucknow, resident of House No. D- 274B, Sector-D, L.D.A. Colony, Kanpur Road, District Lucknow.

.....Applicant

By Advocate : Sri A.K. Srivastava

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager, Head Office, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

.....Respondents

By Advocate : Sri B.B. Tripathi.

ORDER [Oral]

Heard the learned counsel for the applicant and the learned counsel for the respondents and perused the record.

2. The applicant files this original application seeking the following reliefs:

- (1) That an order, direction of relief may kindly be pleased to quash the impugned order dated 05-07-2016, which is annexed as Annexure No.1.
- (2) That an order, direction or relief may kindly be issued thereby

commanding the opposite parties to pay deducted amount/recovery Rs. 177910/- plus interest to applicant.

- (3) That issue any such other order of direction, which this Hon'ble Tribunal deems just and proper in the circumstances of the case.
- (4) Costs of the application be also awarded in favour of the applicant.
- (5) Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case also be passed in favour of the applicant."

3. The brief facts giving rise to this original application are that the applicant, who was railway servant of Class-III, retired from service on 30.06.2016 from the post of Senior Section Engineer. The PPO was issued and pension was granted to the applicant. The applicant during his service tenure granted certain promotion and financial upgradation in the light of MACP scheme of 6th CPC. When the full amount of gratuity was not released by opposite parties, the applicant enquired about the facts and he was informed that applicant's promotion (by financial upgradation under MACP Scheme) was wrongly done and as such an amount of Rs. 177910/- was withheld and deducted from the gratuity. The order by which recovery was made was the order dated 05.07.2016 issued by Assistant Personnel Officer, NR, Lucknow. Admittedly, the change memo of revision was issued after retirement of the applicant. The same was under challenge before this Tribunal. The applicant sought the benefit of O.M. issued on 2nd March, 2016 by DOPT which was adopted by Railways vide its letter dated 22.06.2016. The copy of OM dated 2.3.2016 and letter of 22.06.2016 has been annexed as Annexure No. 5 and 6 respectively to this original application. The O.M. dated 2nd March, 2016 issued by DOPT was in compliance of the judgment of Hon'ble Supreme Court rendered in ***State of Punjab & others Vs. Rafiq Masih (White Washer), [2014] 8 SCC 883***. On the basis of it, it has been contended by learned counsel for the applicant that recovery from the applicant cannot be made as the case of the applicant squarely fall within the ambit of O.M. dated 2nd March, 2016.

4. Counter affidavit has been filed wherein the respondents relied upon the same O.M. dated 2nd March, 2016. In para 9 of his counter affidavit it has been contended that in Clause (III) the recovery is permissible if the same is made within a period of 5 years from the date of wrong fixation of pay.
5. Rejoinder has been filed. The facts stated earlier were reiterated.
6. The learned counsel for the applicant fairly stated that pension of the applicant was fixed on the basis of revised pay in terms of the order dated 05.07.2016 and PPO was accordingly issued and all other retiral dues were released after deducting the aforesaid amount of Rs. 1,77,910/-.
7. Now the question remains to be answered by this Tribunal is; whether the benefit of O.M. dated 2nd March, 2016 would be extended to the applicant or not?
8. The O.M. deals certain contingencies, in which the recovery would be impermissible, which has been dealt in by Hon'ble Supreme Court in its judgment. Para-4 of O.M. dated 2nd March, 2016 contains certain situation in which recovery was said to be impermissible. If the case of the applicant falls in any one of these situations the benefit should have been extended to the applicant.
9. It is not in dispute that the applicant retired as Class III employee of Railways.
10. It is not the case of the respondents that wrong fixation was done on behest of the applicant. Admittedly there is no role of the applicant in alleged wrong fixation of pay.
11. Hence, in view of the above, the case of the applicant is

squarely covered under contingency (i) and (ii). So far as (iii) contingency on which the respondents placing reliance is also one of situation which could be beneficial to the respondents but if the applicant could get the benefit under any other situation such benefit on the basis of (iii) contingency cannot be denied to the applicant.

12. Therefore, in view of the above, this Tribunal finds that the case of the applicant is squarely covered under O.M. dated 2nd March, 2016 issued by DOPT and adopted by railways for its employees vide letter dated 22.06.2016. The learned counsel for the applicant has not sought any relief regarding re-fixation of his pension on the basis of wrong calculation but simply wants for quashing of recovery of Rs. 177910/-.

13. Hence, this original application is allowed. The respondents are directed to make the payment which was withheld and recovered from gratuity of the applicant within a period of two months with statutory interest or the simple interest @ 8% p.a. whichever is less, commencing from 1st August, 2016 till the date of actual payment made to the applicant.

14. There shall be no order as to costs.

(Justice V. C. Gupta)
Member (J)

JNS