

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 332/00245/2017

**Order reserved on : 24.04.2018
Pronounced on : 26.04.2018**

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

Gopal Narain Mishra, aged about 62 years, s/o Late Shri S.P. Mishra, R/o-E-4942, Sector-11, Rajajipuram, Lucknow.

.....Applicant

By Advocate : Sri Praveen Kumar

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, C&W Shop, Northern Railway, Alambagh, Lucknow.

.....Respondents

By Advocate : Sri Ashutosh Pathak.

ORDER

Delivered by: Justice V.C. Gupta, Judicial Member:

The applicant-Gopal Narain Mishra filed this original application seeking the following reliefs:

- “(1) To quash the impugned order dated 31.03.2016, contained as Annexure No. A-1 to this OA with all consequential benefits.
- (2) To refund the recovered amount Rs. 101124/- from DCRG to the applicant alongwith interest @ 12% per annum from 31.03.2016 till the actual date of payment.
- (3) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstance of the case, may also be passed.
- (4) Cost of the present case as the applicant has unnecessarily been dragged in litigation.”

2. The brief facts giving rise to this original application are that the applicant, who was a Class-III railway servant,

retired from service on 31.03.2016 from the post of FMD. The PPO was issued and pension was granted to the applicant. In the impugned letter dated 31.03.2016 it has been indicated that an amount of Rs. 101124/- has been deducted from the settlement dues (Gratuity) payable to him. In this regard, applicant had submitted several representations on 18.05.2016, 16.06.2016, 21.09.2016 and 03.06.2017 but no heed was paid by opposite parties. Aggrieved by inaction of the respondents filed this original application.

3. The applicant sought the benefit of O.M. No. 18/3/2015-Estt (Pay-I) issued on 2nd March, 2016 by DOPT and adopted by Railways vide its letter no. F.No.2016/F(E)II/6/3, RBE No. 72 of 2016 dated 22.06.2016. The copy of Railway Board, New Delhi letter dated 22.06.2016 and DOPT's OM dated 2.3.2016 has been annexed as Annexure No. 5 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 contended that it has been pointed out by the account section that excess salary to the applicant has been wrongly paid due to wrong fixation w.e.f. year 2006. The salary of the applicant had been wrongly fixed and applicant has got excess payment of salary for the period commencing from 01.01.2006 to 01.07.2015.

5. Rejoinder has been filed. The facts stated earlier were reiterated.

6. I have heard the learned counsel for the parties and perused the record.

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. Para 4 of OM dated 2nd March, 2016 is extracted herein below:

"4. The Hon'ble Supreme Court while observing that 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 the 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 with one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for 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 recover made from the employee, would be iniquitous or harsh or arbitrary to sue an extent, as would for outweigh the equitable balance of the employer's right to recover."*

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).

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.

13. 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. 101124/- and asked for its refund with interest.

14. 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 April, 2016 till the date of actual payment made to the applicant.

15. There shall be no order as to costs.

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

JNS