

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

**Original Application No. 332/00246/2017
This the 06th day of June, 2018**

Hon'ble Mr. Justice V.C Gupta, Member - J

Akhilesh Chandra Dwivedi aged about 62 years, S/o Late Shri R.S. Dwivedi, R/o E-361, 4942 Sector F, LDA Colony, Kanpur Road, 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 Alok Shukla

O R D E R (ORAL)

Delivered by: Hon'ble Mr. Justice V.C Gupta, Member - J

Heard the counsel for the applicant and counsel for the respondents and perused the records.

2. The brief facts giving rise to this petition are that the applicant was working as Class 'C' official in the Railway Department on the post of Senior Technician and retired from service on 29.02.2016. At the time of settling the dues certain amounts were deducted from the retiral benefits. An amount of Rs. 51739/- was deducted from DCRG vide bill dated 29.02.2016 and a sum of Rs. 10312/- was deducted from DCRG vide bill dated 02.03.2016 i.e. after the date of retirement.

3. Reply has been filed by the respondents wherein it has been stated that before retirement of the applicant fixation of salary was made vide Office Order No. 473 dated 01.07.2014. It was found that salary of the applicant was wrongly fixed from 01.10.2005 to 01.07.2014. Fixation of salary of the applicant was corrected and amended vide letter

dated 13.02.2016 by Northern Railway, Rail Engine Karkhana, Charbagh, Lucknow.

4. It was further contended that the applicant was retired on 29.02.2016 and vide order dated 22.04.2017 a decision has been taken that Fitter Mill Right Group Employees, who have been retired from the railway service in between January 2016 to July 2016, the salaries have been fixed vide Mu. Ka. No. 14600/01 dated 29.07.2016 in view of 7th Pay Commission w.e.f. 01.01.2016. The name of applicant stands at Sl No. 5 in the order dated 22.04.2017, the copy of which has been annexed with CA.

5. RA has been filed against the CA reiterating the stand earlier taken in the O.A.

6. Heard the counsel for the applicant and counsel for the respondents and perused the records.

7. Counsel for the applicant pointed out that in similar circumstances benefit of O.M. dated 02.03.2016 issued by DoPT and adopted on 22.06.2016 in RBE No. 72 of 2016 by the Railways was extended to Gopal Narain Mishra in O.A No. 245/2017, copy of which has been placed on record.

8. It was also contended that in view of Col (i) and (ii) of O.M dated 02.03.2016 no recovery from employees belonging to Class 'III' and 'IV' could be made and also no recovery from retired employee or employee who are due to retire within one year could be made. As such, the case of the applicant is squarely covered with the aforesaid circular.

9. Learned counsel for the respondents pointed out that this is the case of wrong fixation of salary and the same may be recovered, as such, there is no illegality in the impugned order and there is no impediment in recovering the amount which was virtually deducted while determining the settlement of dues at the time of retirement.

10. Learned counsel for the respondents fails to explain what was the effect of office order No. 214 dated 22.04.2017 in the present case because the bill of deduction was made from DCRG does not relate back to the aforesaid order. It does not appear from the record that the office order for recovery are made in pursuance of the aforesaid order No. 214 dated 22.04.2017.

11. This Tribunal while deciding the O.A No. 245/2017 deal with this controversy which is squarely covered in this case and that verdict has been delivered in Gopal Narain Mishra (Supra). The applicant of that case was class 'III' railway servant retired on 31.03.2016 from the post of FMD. PPO was issued and pension was granted to the applicant. In that impugned order dated 31.03.2016 i.e. order passed on the date of retirement, an amount of Rs. 101124/- was deducted from the settlement dues (gratuity) payable to the applicant which was subject matter of challenge in that O.A in the light of O.M No. 18/3/2015-Estt (Pay-I) issued on 02.03.2016 by DoPT and adopted by Railways vide its letter No. F. No. 2016/F(E)II/6/6, RBE No. 72/2016 dated 22.06.2016. The relevant portion of the judgement as contained in Para 7, 8, 9, 10, 11, 12, 13 and 14 are extracted herein below for ready reference:

"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 4 CAT-LKO BENCH OA No. 332/00245/2017-Gopal N. Mishra Vs. UOI 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."

12. This Tribunal finds that in similar circumstances the benefit has been extended to Gopal Narain Mishra, applicant in O.A No. 245/2017. The present case is squarely covered with the judgement delivered in O.A No. 245/2017 and similar benefit is liable to be extended to the applicant of this O.A. Consequently, this O.A is decided

in terms of the order passed in Gopal Narain Mishra quoted herein above.

13. Consequently, the O.A is allowed. Respondents are directed to make payment of Rs. 62051/- which was recovered from the 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 01.03.2016 till the date of actual payment made to the applicant.

14. With the above observations, the O.A is finally disposed of. There shall be no order as to costs.

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

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