

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH,  
CAMP AT NAGPUR.**

**O.A.211/00047/2018**

**Dated this Tuesday the 9<sup>th</sup> day of October, 2018.**

**Coram: Dr.Bhagwan Sahai, Member (A) .**

1. Hifzur Rahim s/o Abdul Shadeed, aged about 53 years, working in the post of Loco Pilot (Goods) in S.E.C.R., Nagpur, R/o.Flat No.201, Amar Silver Palace, Mankapur, Nagpur - 440 030.
2. Pradeep Padmakar s/o.P. Anjikar, aged about 57 years, working in the post of Loco Pilot (Shunter) in S.E.C.R., Nagpur, R/o. Rly, Qtr. No.144/3, Motibagh, Nagpur - 440 014. . . Applicants.

**( By Advocate Shri B. Lahiri ).**

**Versus**

1. Union of India, through General Manager, S.E.C.R., Bilaspur, Chattisgarh-495004.
2. Divisional Railway Manager, South East Central Railway, Near Railway Station, Nagpur-440001.
3. Divisional Personnel Officer-II, South East Central Railway, Near Railway Station, Nagpur - 440 001.

**( By Advocate Shri Alok Upasani ).**

**Order reserved on : 30.8.2018  
Order delivered on : 09.10.2018.**

**O R D E R**

1. Through this O.A. the applicants are seeking relief in terms of

**1(a)** . quashing and setting aside of letter dated 28.06.2017 issued by Divisional Personnel Officer-II, South East Central Railway, Nagpur for recovery of one additional increment granted to them in 2007-08;

**1(b)** . declaration that the impugned recovery is impermissible in law in terms of Para 12.5 of the order passed by the Hon'ble Supreme Court in the case State of Punjab and others Vs. Rafiq Masih (White Washer) etc.;

**1(c)** . direction to respondents to refund the amount of deduction made so far from the salary of the applicants; and

**1(d)** . grant them the cost of these proceedings.

2. Facts of the case stated in brief:-

**2(a)** . The Applicant No.1 was appointed as Diesel Cleaner by respondent No.3 i.e. Divisional Personnel Officer-II, South East Central Railway, Nagpur on 13.12.1988. He came to be promoted as Assistant Loco Pilot in April, 1998, Loco Pilot (Shunter) in 2007 and finally as Loco Pilot (Goods) in March, 2010. He is presently working on this post.

**2 (b) .** The Applicant No.2 was appointed by the same respondent on 25.02.1984 as Engine Cleaner. He was promoted as Assistant Loco Pilot in 1993 and subsequently as Loco Pilot (Shunter) in 2007. He is continuing on this post.

**2 (c) .** Vide order dated 28.06.2017, recovery of Rs.5033/- per month from the salary bill of applicant No.1 and Rs.4982/- from the salary bill of applicant No.2 has been ordered against overpayment of one increment to the applicants at the time of fixing pay on promotion.

**2 (d) .** The applicants were made available communication dated 28.06.2017 (Annex A-1) in which it has been observed that the applicants were granted additional increment wrongly on their promotion in 2007-08 from Sr. Assistant Loco Pilot to Loco Pilot-II on Grade Pay of Rs.2400 (non-functional), and that increment granted to the applicants is being now recovered.

**2 (e) .** The applicants made representations to the respondents on 10.07.2017 and 06.09.2017. However, no relief has been granted to them. Hence this O.A. for the reliefs sought as mentioned above.

**3. Contention of the parties:-**

The applicants' Advocate has submitted that

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**3 (a) .** the recovery ordered by the order under challenge has been effected after 10 years and without giving any hearing to the applicants. Their representations have also not been considered and replied to. This recovery being made by the respondents is against decision of Hon. Supreme Court case law in **State of Punjab & others etc. Vs. Rafiq Masih (White Washer) etc., Civil Appeal No.11527/2014 decided on 18.12.2014.** Therefore, this order of recovery should be quashed and set aside, and relief should be granted to the applicant as prayed in the O.A. memo.

The respondents' Advocate has contended that -

**3 (b) .** the amount of recovery being made is only of Rs.5033/- per month from July, 2017 from applicant No.1 and of Rs.4982/- per month from applicant No.2. This amount of recovery is only about 10% of monthly salary of the applicants, therefore, it does not cause any hardship to them;

**3 (c) .** as per the view taken by the Apex Court in **Union of India & Ors. Vs. Shri Bhanwar Lal Mundan, Civil Appeal No.7292/2013 decided on 27.08.2013**, if fixation of pay had been done erroneously, the

authorities (the respondents in the present case) were within their domain to rectify it;

**3(d).** the applicants and their counsel are attempting to wrongly interpret the decision of Supreme Court in the case of State of Punjab Vs. Rafiq Masih. The main factor considered in that case law is of hardship i.e. if the recovery causes hardship to the concerned employee only then this is to be considered for not recovering or otherwise;

**3(e).** as held in the case law of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. (2012) 8 SCC 417**, overpayment made to employees without the authority of law can always be recovered. Since the overpayment has been made to the applicants inadvertently, the recovery is justified and it is being made only in small instalments. In view of this, the interim relief granted in this case resulting in stoppage of the recovery should be vacated and by dismissing the O.A., the respondent No.3 should be allowed to make the recovery from the applicants;

**3(f).** an additional increment was given to the applicants on their promotion from the post of Sr.Assistant Loco Pilot to the post of Loco Pilot (Shunter Gr.II) with Grade Pay of Rs.2400/- which is

non-functional. The applicants were not entitled for the amount which has been granted to them inadvertently and, therefore, the recovery is justified;

**3(g).** before issuing the order of recovery on 28.06.2017, the applicants had been informed on 06.07.2017 by Office Superintendent and recovery sheet had already been supplied to them. This order of recovery has been issued after verification of the service record of the applicants and, therefore, the claim of the applicants that they were not given prior notice or were not informed prior to the decision is false and unsustainable;

**3(h).** the decision as above is clearly in view of the order dated 26.07.2014 and 09.06.2014 specifying that benefit of fixation under Rule 1313 (FR-22) (1) (a) (1) R-II would now be admissible on functional promotion and once the employee has got the benefit of fixation on non-functional movement under the earlier scheme in vogue, such an employee will not be entitled to fixation again under the above rule on functional promotion;

**3(i).** since the overpayment made to the applicants has been out of tax payers money i.e. public resources, and any amount paid or received

without authority of law from the tax payers money can always be recovered except when there is a case of extreme hardship; and

**3(j).** in this case of the applicants an additional increment was wrongly granted to them when they were promoted further from the post of Assistant Loco Pilot to the post of Loco Pilot Shunter, Gr.II in Grade Pay of Rs.2400/- (non-functional). Since the applicants were not entitled for this increment and it has been wrongly granted to them, its recovery is fully justified and reliance on the Apex Court decision in case of State of Punjab & Ors. Vs. Rafiq Masih is not applicable in this case.

**4.** Analysis and conclusions:-

**4(i)** As explained by the respondents in their submissions, an additional increment was granted to the present applicants when the recommendations of the 6<sup>th</sup> Central Pay Commission were implemented. The pay of the applicants was revised when this revised fixation of pay was made, they were promoted from the post of Sr. Assistant Loco Pilot (non-functional) in PB-1 with Grade Pay of Rs.2400/- to the post of Loco Pilot (Shunter) Gr.II (non-functional). This means that Sr. Assistant Loco

Pilot (non-functional) and Loco Pilot (Shunter) Grade-II are with the same Grade Pay of Rs.2400/-. Therefore, grant of additional increment on promotion in such a case was not admissible. But while promoting them by mistake an additional increment was also granted. Since this grant of additional increment while fixing the pay on promotion was done erroneously, overpayment has been made to the applicants.

**4(ii)** This promotion to the applicants was given in the year 2007-08 and the pay fixation was done at that time. The respondents claim that the applicants were well aware of the excess payment made to them. While that may be true, the fact remaining that the pay fixation was done by the respondents and the erroneous grant of one increment to the applicants also took place because of the mistake/error of the respondents themselves.

**4(iii).** Therefore, as contended by the counsel for the applicants while deciding this O.A. reliance on the view taken by the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih dated 18.12.2014 is relevant. The order of recovery of the excess payment is of 28.06.2017. Hence, in view of the above caselaw, the recovery of the over-

payment made by the respondents for a period in excess of 5 years before ordering the recovery is not permissible. The recovery can be made only of the excess payment which has been made to the applicants during the period of five years prior to the order of the recovery i.e. the excess payment made after June, 2012. Resultantly the excess payment made to the applicants prior to June, 2012 by the wrong or erroneous grant of one increment to them while revising their pay on promotion during 2007-08 cannot be recovered.

**4(iv).** In view of this, the applicants succeed partly in this O.A.

**5. Decision:-**

The O.A. is partly allowed. The respondents are directed not to recover the amount of excess payment made to the applicants prior to June, 2012. They can recover only the amount of excess payment made to them after June, 2012. No order as to costs.

**(Dr. Bhagwan Sahai)  
Member (A).**

H.

