

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00690/2014

**Reserved on- 22.02.2018.
Date of pronouncement 28.03.2018**

CORAM

**Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri J.V. Bhairavia, Member [J]**

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1. Laxman Mahto son of late Musafir Mahto resident of Village-Choti Badalpura (Brahm Asthan lane), Khagaul, P.O.- & P.s.- Khagaul District- Patna.

.....Applicants

By Advocate : Shri Sudama Pandey

VERSUS

1. The Union of India through General Manager, East Central Railway, hajipur (Vaishali).
2. The Divisional Railway Manager, E.C. Railway, Danapur, Patna
3. The Sr. Divisional Personnel Officer, E.C. Railway, Danapur, Patna
4. The Senior Divisional Financial manager, Danapur.
5. Senior Divisional Financial Signal & Telecom, Engineer E.C. Railway, Danapur.

....Respondents

By Advocate : Shri S.K. Ravi

O R D E R

Per Jayesh V. Bhairavia, Member (J): This is third round of litigation. In the present OA the applicant has mainly prayed for refund of Rs.2,93,993/- which has been recovered by the respondents from his Gratuity due to retardation of pay which amended on 10.10.2012 due to wrong fixation of his pay on 13.06.2002. The applicant has sought for reliefs are as under :-

"[8.1]That Your Lordships may graciously be pleased to admit this application, issue notice to the concerned respondents and after hearing the counsels for the parties your Lordships may further be pleased to direct the respondents to remit back the Sum of Rs.2,93,963/- without any further delay.

[8.2]That your Lordships may further be pleased to pass an appropriate order/orders directing the respondents concerned to compute and recalculate the salary of the applicant taking into the account of his due date of increment in 1st July every year and pay the balance legitimate amount without any further delay.

[8.3] Any other order or orders as your Lordships may please deem fit and proper in the interest of justice.

[8.4] Cost of the case may please be awarded for unnecessary expenditure incurred in litigation, sorrow, suffering and mental agony."

2. The brief facts of the case as submitted by the applicant is as under :-

- [i] The applicant in this O.A was initially appointed/joined on 20.08.1974 as a Cleaner in Eastern Railway, Mughalsarai under the Danapur Division after due process.
- [ii] Vide Circular dated 25.06.2015, restructuring of Cadre Group D & D in the Eastern Railway was done wherein it was stipulated that seniority as on 01.01.1984 in the cadre was to be maintained if a Railway servant became due for promotion. However, the post held by the applicant and higher post was to be clarified, the same was modified to the extent that promotion would be given only after scrutiny of record without holding any test of Viva-voce.
- [iii] The applicant was promoted to the rank of Fireman Grade 'D' (2nd grade Fireman) and subsequently he was promoted to the post of Fireman Grade 'B' with effect from 11.10.1985. Consequent upon the merger of cadre A & B posts pursuant to 4th Pay Revision Commission, the applicant became fireman grade-'A' w.e.f.01.01.1986. A seniority list of Fireman working in Danapur Division was published on 30.06.1986 in which the applicant's name find place at sl.no.166 and 57 colleagues who were working with him were placed below his name.
- [iv] Vide office letter dated 08.07.1986, about 31 persons were given promotion in different pay scale but the name of applicant was not considered. The applicant thereafter submitted a representation for considering his name for promotion but that has not elicited any response and thereafter nine seniority list of Fireman Grade A & B were published as per the senior posting held on 01.05.1987 in which 57 employee who were below the applicants name were senior. The applicant

submitted another representation but the same also got no response. Being aggrieved, the applicant approached this Tribunal by filing OA 51/92 which was dismissed with observation that the applicant may approach the Tribunal if final order is communicated.

[v] Thereafter, the applicant had approached this Tribunal by filing OA 122/1992. The said OA was disposed of vide order dated 19.04.1993 with an observation that the applicant should have raised objection before the concerned authority.

[vi] Vide letter dated 11.02.1994, the Divisional Personal officer Danapur had informed the applicant that his name was placed in seniority list below the names of his counterparts who were provisionally given promotion to the higher grade, against which, the applicant had submitted his representation on 07.06.1996 requesting the authority to do the needful for his promotion maintaining his seniority in terms of 1985 guidelines of Railway Board, but in vain. Therefore, the applicant had filed OA 502/1994 before this Tribunal challenging the order dated 11.02.1994 which was subsequently dismissed vide order dated 26.05.1995. Thereafter, the applicant had moved to the Supreme court by way of SLP no. 23142/1995 against the order dated 26.05.1995 passed in O.A 502/1994. The said SLP was converted into Civil Appeal No. 10912/1996 which was subsequently disposed of by the Hon'ble Apex Court vide order dated 09.05.2001 with a direction to the respondents concerned to draw a fresh seniority list in terms of guidelines of Railway Board issued as back as 1985. However, no compliance to the said order, therefore the applicant had filed a contempt petition which was subsequently disposed of with a liberty to applicant to challenge the same before this Tribunal. Subsequently, the respondents had revised the seniority list and the applicant was

placed at sl. No. 169A just above his junior of sl. No. 170 Shri G.H. Night.

- [vii] The applicant further contended that during the period of 1987 to 1998 the applicant was given promotion at various occasion and with effect from 01.07.2003 the applicant was given promotion to the post of Driver, Mail/Express in the pay scale of Rs. 6000-9800/-. The applicant was medically de-categorised while he was working in the pay scale of Rs.6000-9800/- and therefore, he was given alternative posting as Office Superintendent in the pay scale of 6000-9800/- at Danapur which was subsequently revised and fixed w.e.f 01.01.2006 in the pay scale of 9300-34800/- consequent upon revision of 6th CPC.
- [viii] It is further contended that the applicant after rendering his about 38 years of successful and unblemished service, he superannuated from his service on 31.10.2012 as Chief Office Superintendent, Signal and Telecom, Danapur on completion of 60 years of his age.
- [ix] On 30.10.2012, a day before his superannuation, he was served with a copy of letter dated 11.10.2012 issued by the Senior Divisional Personnel Officer, Danapur whereby the office superintendent pay bill E.C. Railway Danapur was directed to pay from the salary of the applicant on the basis of retardation of pay. (Annexure A/7 refers). Pursuant to it, the applicant was served with a copy of PPO dated 30.10.2012 for sum of Rs. 2,93,963/- and it has been shown that the said amount has been deducted from his retiral benefits even without giving any show cause to the applicant. (Annexure A/8 refers). It is submitted that the order of retardation of pay dated 10.10.2012 has been done on account of error detected in fixation and revision of pay for the period between 1999 to 1.07.2012 which

appears to be self contradictory and no reasons have been assigned for the said calculation.

[x] The applicant has further contended that the due date of annual increment was the 1st July of the year, which the respondents have change from the period from 01.11.1999 to 01.05.2003 resulting the applicant incurred huge loss. The said action of the respondents is erroneous and therefore the respondents are required to be directed to recalculate the salary paid to the applicant taking to the account of his due date of his annual increment i.e 1st July of every year. It is submitted that due to erroneous calculation, the applicant has suffered huge loss.

[xi] It is further contended that the pay of the applicant was revised and fixed by the competent authority from time to time after following the due process of law in accordance with relevant rules and there was no misrepresentation or any fraud on the part of the respondents in fixation of the pay of the applicant. Therefore, recovery/deduction from retiral benefits is impermissible in law. The applicant had submitted a representation before the authority concerned on 31st December 2012 and 08.02.2013 and requested to reconsider the case of the applicant and do the needful for realisation of Rs.2,93,663/- (Annexure A/11 refers). The respondents have not considered the representation of the applicant hence the present O.A for the relief as prayed for.

3. In response to notice, the respondents have filed their detailed written statement and denied the claim of the applicant. The respondents have submitted that the applicant was retired from service on 31.10.2012 from the post of Office Superintendent in pay band of Rs. 9300-34800/- with GP 4600 having last pay as Rs. 24890 + 4600 = 25,490/- All the admissible settlement dues paid to the applicant at the time of superannuation. The respondents have mainly submitted that the pay was fixed on 30.01.2001 as Rs.5675/- while wrongly he was paid @

6500/-. The salary slip of December 2005 and January 2006 (Annexure A/9 refers) whereby the basic pay was shown Rs7520/- which is similar as shown in Annexure A/7 i.e Rs.7520/- on 01.07.2005. (Annexure A/7 and order dated 10.10.2012 refers). The applicant was provided his entire service record vide letter dated 08.10.2014. It is further contended that at the time of verification of applicant's service record it was detected that his pay was fixed wrongly in the year 2002, However the applicant was continuing to draw the salary which was excess. The fixation of his pay has been revised and corrected and the order of payment made to him deducted from his gratuity. The administrative is entitled to correct the fixation of pay of his employee whenever it came to his notice under conformity of rules and accordingly corrective measure were taken. Therefore, the applicant is not entitled to claim for refund of Rs.2.93.663/- .

4. Heard the parties and perused the records and considered their submissions. The issue with regard to recovery of excess payment paid to government employee is not in *res integra*. In the case of State of Punjab vs Rafiq Masih reported in 2015 (4) 334 the Hon'ble Apex Court held that "it is not possible to postulate all situation of hardship where the payment have mistakenly been made an employer, in the following situation, a recovery by the employee is 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 employee, 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 case where an employee has wrongfully required to discharge duty of a higher post, and has been paid accordingly, even though he should have rightfully be 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 employers right to recover.

5. The principle enunciated in the above referred judgement, and the proposition stipulated in no. (ii) applicable to a situation such as in the present case. In the present case, It is admitted fact that the applicant was due to retire on

31.10.2012 and he was served with order of recovery on 30.10.2012 i.e within one year from the due date of retirement of the applicant. Therefore, the action of the respondents is totally contrary to the law laid down by the Hon'ble Apex Court. The recovery order dated 10.10.2012 (Annexure A/7 refers) which was served on 30.10.2012 to the applicant stipulates the period of excess payment/salary from 01.01.1999 to 01.07.2012 and more particularly from 30.01.2001, the basic pay was shown to withdrawn Rs.6550/- whereas as per the recovery order, it has been stated that it should have been drawn Rs.5675/- with effect from 13.06.2002 and it has been further observed that that till 01.07.2012 the applicant had been paid excess salary. It is noticed that the said period of excess payment is in excess of five years before the order of recovery issued by the respondents therefore also the decision of respondents to recover the amount from the gratuity of applicant is erroneous.

6. In view of what is stated hereinabove, the impugned order of recovery of Rs. 2, 93, 963/- passed by the respondents from the retiral benefit of the applicant just before one day of the retirement of the applicant is not in consonance with the law laid down by the Hon'ble Apex Court in the case of State of Punjab vs. Rafiq Masih (supra). Hence; in the facts and circumstances of the present case, the impugned order dated 10.10.2012 deserves to be quashed and accordingly the said impugned order is hereby quashed. The applicant is entitled to get refund of the recovered amount as well as also entitled for retiral benefits accordingly. Therefore, the respondents are directed to refund the recovered amount to the applicant with interest @6% per annum from the date of recovery to the date of actual payment. It is further directed that the respondents shall accordingly re-fix the retiral benefits of the applicant such as pension etc. The whole exercise, as directed above, be completed within a period of three months from the date of receipt of a copy of this order. Accordingly the O.A is allowed in terms of the above direction. No order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

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