

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 050/00612 of 2015

Date of order reserved: 28.05.2018
Date of Order : 30.05.2018

CORAM
Hon'ble Shri Jayesh V. Bhairavia, Member [J]

Dilip Mehta, S/o Late Ram Das, Ex Parcel Clerk, East Central Railway, Rajendra Nagar, Patna, R/o Lal Chowk, Khagaul, District – Patna.

.....Applicant

By Advocate : Shri M.P. Dixit

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur District, Vaishali.
2. The General Manager (Personnel), East Central Railway, Hajipur District, Vaishali.
3. The Divisional Railway Manager, East Central Railway, Danapur, Khagaul, Patna.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, Khagaul, Patna.
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, Khagaul, Patna.
6. The Senior Divisional Financial Manager, East Central Railway, Danapur, Khagaul, Patna.

.....Respondents

By Advocate: Shri Sheo Jee Prasad

O R D E R

Jayesh V. Bhairavia, M [J]:- The applicant herein is aggrieved by the order dated 04.03.2014 issued by respondent no. 6 whereby a recovery of Rs. 1,69738/- has been made from the DCRG on account of overpayment, and as such, he prays for the following reliefs:-

"(8.1) That Your Lordships may graciously be pleased to quash and set aside the impugned order dated 04.03.2014 concerning the recovery of overpayment of Rs. 1,69,738/- issued by respondent no. 6 as contained in Annexure A/4 together with the reason shown in Annexure A/4 for making said recovery.

(8.2) That the respondents be further directed to refund / release the said recovered amount from DCRG amounting to Rs. 169838 (169738) henceforth along with the interest at the rate of 12%.

(8.3) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant"

2. The applicant, while serving as Parcel Clerk under the respondents /Railway, retired on superannuation from the service on 28.2.2014. After his retirement, he was served with an order dated 04.03.2014 issued by respondent no. 6, whereby the applicant was intimated that a recovery of Rs. 169738/- against overpayment has been made from the DCRG amount. Thereafter, the applicant submitted his representation on 13.03.2014. No reply to his representation was given. He, therefore, sent one representation under RTI on 17.6.2014. Thereafter, he received reply dated 3.9.2014, disclosing therein that the applicant was LWP for 726 days which warranted recovery from the DCRG amount. Vide representation dated 22.09.2014, the applicant asked for the details of said 726 days LWP which was followed by an appeal dated 14.11.2014. According to the applicant, all went in vain and till date no details regarding the LWP was supplied to the applicant. Annexures A/1, A/2, A/3, A/3(a), A/4, A/5 and A/6 refer. In sum, the applicant submits that the action of the respondents to make recovery of Rs. 169738/- from the DCRG amount is arbitrary unjust, as also to harass the applicant after his retirement.

3. The respondents, through their written statement, have denied the claims of the applicant. They have further stated that the service of the applicant was verified at the time of his retirement, and it was found that he was absent for 726 days which were regularized against leave without pay. Due to LWP period, the increment was retarded, as a result of which the overpayment already made was deducted from the DCRG which is in

conformity with the rules. Consequently, due to re-fixation of his pay after taking into account the absentee period, the overpayment of Rs. 1,69738/- remained outstanding against the applicant. This outstanding amount was recovered from the DCRG which is in conformity with the rules. The respondents have further contended that the applicant was duly informed about the deduction, hence, the allegation of not giving show cause is denied. The Railway administration, at any stage, can take corrective measures for fixation of pay to avoid loss to the Government. It is further submitted that the applicant had denied the fact about availing LWP. In this regard, the respondents had determined the total LWP of 726 days at the time settlement of retiral dues. Therefore, the applicant is not entitled for any relief.

4. After hearing the parties and on perusal of the materials on record, This Tribunal is of the considered opinion that gratuity amount could not have been adjusted towards any dues as it was no longer a bounty. The claim of the respondents that the applicant was absent for 726 days and this absence was regularized against Leave Without Pay and as a result of re-fixation of pay, overpayment made in this regard had to be recovered from DCRG amount is not sustainable in law, as it was the fault of the respondents that they did not verify the applicant's service prior to his retirement. The applicant have categorically stated that he had not availed the LWP, as against this, the respondents have failed to produce any service record of the applicant, though ample opportunity had been provided to them. It is required to note that the learned counsel for the respondents , on the instruction, had fairly submitted that the service book of the applicant was not traceable and also admitted that before the deduction, there is no material on record which can establish the fact that applicant was put to knowledge about grant of LWP and there will be deduction of excess payment. The said deduction from the DCRG of the applicant was made only

at the time of retirement of the applicant without any supporting document. Further, it was not a case of misrepresentation by the employee who belongs to Group C category. The respondents department is the custodian of service books and other personal file containing the service details of its employee. Furthermore, it also does not stand to reason that the respondents had been quite unaware of an employee being absent for 726 days, and no action appears to have been taken at the time when he was remaining on leave without pay. It goes without saying that the respondents department have not maintained the record of leave account of the applicant properly. The applicant cannot be faulted for the lapse which the respondents have committed.

It is further noticed that the applicant has retired while holding the post of Parcel Clerk which is Group C post. It is a settled principle of law laid down by the Hon'ble Apex Court in the case of State of Punjab and ors vs Rafiq Masih (White Washer) & Ors reported in (2015) 4 SCC 334 that recoveries by the employer would be impermissible in law when the employee belonging to class III and Class IV (Group C and Group D) , as also recovery from retired employees.

5. In view of the above position, I hold that the post retirement recovery from the DCRG amount of the retired Group C & D employee is bad in law. In the result, the OA is allowed and the impugned order dated 04.03.2014 as at Annexure A/1 is quashed and set aside. The respondents are directed to refund Rs. 1,69,738/- to the applicant immediately with interest thereon @ 9% per annum, payable from the date of recovery to the date of actual payment, preferably within two months from the date of receipt of copy of this order. No order as to costs.

(Jayesh V. Bhairavia) M [J]

/cbs/

