

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This the 12<sup>th</sup> Day of December 2018)

**Hon'ble Mr. Rakesh Sagar Jain, Member (J)**

Original Application No.330/01223 of 2017.  
(U/S 19, Administrative Tribunal Act, 1985)

Krishna Kumar Sharma, aged about 68 years, son of Late Pratap Bhan, Resident of 40, Prakash Textile Colony, Near Bijali Cotton Mill, Mendo Road, Hathras.

..... Applicant

By Advocate: Shri T.S Pandey

Versus

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Senior Divisional Finance Manager, North Central Railway, Allahabad.

..... Respondents

By Advocate: Shri P.K Pandey

**ORDER**

1. The applicant has filed this O.A. under section 19 of Central Administrative Tribunals Act, 1985 seeking following reliefs –

“(i) Issue a writ, order or direction in the nature of certiorari quashing the orders dated 19.8.2016, 12.11.2013 and 05.03.2014 (Annexure A-1,A-2 & A-3) to the compilation No.1 of Original Application) with cost with the further order or direction in the nature of mandamus directing the respondents to restore back the original pension order dated 27.08.2009 and repay back the recovered amount with 12% interest, within a stipulated time, with

exemplary cost, whatsoever this Hon'ble Tribunal deems fit and proper.

- (ii) Award cost/exemplary cost.
- (iii) Any other and further relief which this Hon'ble Tribunal deem fit and proper be also awarded to the applicant within a stipulated time".

2. The brief facts of the case as narrated in the O.A. are that:-

- (i) The applicant was initially appointed as Lineman after selection vide order dated 10.07.1977 (Annexure A-4).
- (ii) After having been successful in the training at Chandausi, the applicant along with others was promoted to the post of Tower Wagon Driver in the pay scale of 1320-2040 vide order dated 18.01.1988 (Annexure A-5).
- (iii) After discharging the service of more than 32 years, the applicant retired from service on 31.5.2009.
- (iv) After retirement, the applicant was granted pension vide order dated 27.08.2009 (Annexure A-6).
- (v) All of sudden, the respondent No.2 vide his order dated 12.11.2013 reduced the pension of the applicant.
- (vi) Respondent No.2 vide his another order dated 5.3.2014, reduced the pension of the applicant to Rs.9281/.
- (vii) Against these orders, the applicant served a notice vide notice dated 29.07.2016 (Annexure A-7).
- (viii) Respondents vide order dated 19.8.2016 denying the old pension, which was drawing by the applicant.

3. In the counter reply, it has been submitted by the respondents that applicant filed earlier O.A. No. 330/01212 of 2016 before this Tribunal but the same was withdrawn by him, as such applicant is guilty of concealment of material fact and, therefore, the O.A. is dismissed on this ground. Respondents have further submitted that applicant has been

given benefit of higher pension due to decision of C.A.T., Principal Bench, New Delhi dated 27.1.2013. The aforesaid compliance was subject to the final judgment in the case pending before the Hon'ble Supreme Court. The Railway Board took a decision in view of final judgment of Hon'ble Supreme Court dated 8.7.2010 in S.L.P (C) No. 365/2007 and accordingly in view of Railway Board letter No. PC-V/2000/CC/16/Pt dated 15.11.2010, the higher pay scale of Rs.50000-8000 was withdrawn and Tower Wagon Drivers were continued in earlier pay scale Rs. 4000-6000/4500-7000/-.

4. In the rejoinder, the applicant reiterated the averments made in the O.A. and further stated that the applicant is governed by the Pension Rules 1972 and his pay was rightly fixed and the respondents are not entitled to recover any amount from him.
5. I have heard Shri T.S. Pandey, learned counsel for the applicant and Shri P.K. Pandey, learned counsel for the respondents and gone through the pleadings on record.
6. Two main issues are involved in this O.A. Firstly, whether the respondents were justified to withdraw the higher pay scale of Rs.5000-8000/- and continue to earlier pay scale Rs. 4000-6000/4500-7000 of Tower Wagon Drivers and secondly whether fixation of pay was wrongly made and payment made in excess due to wrong fixation of pay can be recovered from the applicant?
7. The controversy regarding higher pay scale of Rs.5000-8000 to the applicant was withdrawn by the respondents is clearly stated in the counter reply that the said pay scale was granted by the applicant in compliance of decision of C.A.T, Principal Bench, New Delhi subject to decision of Hon'ble Supreme Court and Railway Board took a decision in view of

the final judgment of Hon'ble Supreme Court dated 8.7.2010 in SLP (C) No. 365/2007. Now there is no dispute that the respondents are entitled to restore back pension of applicant which was given in the pay scale of Rs.5000-8000. Thus no interference is required in the impugned orders regarding restore back the pension of the applicant.

8. Secondly, the department is not entitled to recover the excess amount paid due to wrong fixation of pension to the applicant in view of judgment of Hon'ble Apex Court in State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported in 1 (2015) 4 SCC 334. In the case of Rafiq Masih (supra), the Hon'ble Supreme Court contended that recovery of excess payment cannot be made from a retired employee. Hon'ble Supreme Court in para 12 of its judgment has held as under:-

"12. 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 their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise 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 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 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 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 employer's right to recover".

9. The applicant has failed to convince me that his pay was rightly fixed by the respondents in the pay scale of Rs.5000-8000 and it has also not been contradicted the averments made in the counter reply that such pay scale was given due to compliance of order of C.A.T. Principal Bench, New Delhi subject to decision of Hon'ble Supreme Court in SLP (C) No. 365/2007.
10. It has been contended that in view of item (i) and (ii) above, no recovery of excess payment could be made from the employees belonging to Class III and Class IV and as the applicant has also retired on 31.05.2009, the order of recovery from the pension of the applicant is liable to be quashed.
11. Accordingly, OA is partly allowed, The prayer for restoring the pay scale of Rs.5000-8000 is denied as the same had been given in compliance of order of C.A.T Principal Bench, New Delhi subject to the decision of Hon'ble Supreme Court in SLP

(C) No. 365/2007. In so far as prayer not to recover and refund the excess pension given to the applicant, the respondents are directed not to recover the excess pension and refund the amount recovered from the pension of applicant along with simple interest @ 8% p.a from the date of deduction till its payment. The said exercise shall be completed within a period of 2 months from the date of receipt of a certified copy of the order. No order as to costs.

**[Rakesh Sagar Jain]**  
**Member-J**

***Manish/-***