

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/858/2016

Date of Reserve: 01.03.2019

Date of Order: 05.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Dayanidhi Puhan, aged about 62 years, S/o. Late Ranka Puhan, retired C.B.S./BHC, permanent resident of Vill-Pathara Adi, PO-Charampa, Dist-Bhadrak-756 101, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired railway employee. He had earlier approached this Tribunal in O.A.No.453 of 2016 challenging the recovery of Rs.68,505/- effected by the Railway Administration from his D.C.R.G. without any prior notice. This Tribunal vide order dated 10.08.2016 disposed of the said O.A. with direction to Respondent No.2 to consider the pending representations preferred against the aforesaid recovery and dispose of the same through a reasoned and speaking order to be communicated to the applicant. It was directed therein that if the applicant is found to be entitled to the benefits

claimed, then expeditious steps be taken to extend the said benefits to the applicant.

2. In compliance with the aforesaid direction, Sr. Divisional Personnel Officer, East Coast Railways, Khurda Road (Res.No.2) passed a reasoned and speaking order dated 31.10.2016 (A/7) which reads as follows:

“Sub: Reasoned and Speaking order issued in obedience to the Hon’ble C.A.T., Cuttack’s Order dt. 10.8.2016 passed in O.A.No.543 of 2016, Dayanidhi Puhan, vs. U.O.I. & Another:

1. In obedience to the Hon’ble Tribunal’s order dtd.10.8.2016 applicant’s representations dt. 15.02.2016 & 30.5.2016 vide Annexures-A/4 to O.A. have been considered and examined by the undersigned basing on the relevant rule position and after such examination, it is to inform that:
2. The applicant has requested in his representations dt. 15.02.2016 & 30.5.2016 for refixation of his Pay at Rs.24,310/- instead of Rs.23,880/- and also to refund the recovered amount of Rs.68,505/- from D.C.R.G. with interest @ 12% p.a.
3. It reveals from the file of papers that the applicant while working as Head B.C. in Scale :Rs.5000-6000/- (5th CPC) with Pay :Rs.6500 has been promoted to the post of C.B.S.-II in Scale :Rs.6500-10500/- on 01.11.2003 and accordingly, the applicant’s pay was fixed at Pay : Rs.6900/- on promotion.
4. The applicant while in service was promoted to the post of C.B.S.-I in Pay Band-2 with Grade Pay: Rs.4600/-. The applicant was due to retire from service w.e.f. 31.3.2015. It was expedient on the part of Railway administration that before attaining superannuation of an employee, it is mandatory to review the Service Record of an employee by the Finance Branch in order to rectify the errors pertaining to less or more drawn of pay during his service career, if any.
5. Accordingly, the applicant’s Service Record was reviewed by the finance Branch and at the time of review of the applicant’s Service Record, it was detected the applicant’s Pay has been wrongly fixed while in service during promotion on 01.11.2003. The said error of fixing pay in higher side was continued till his retirement and finally, his lat pay was Rs.24,310/- before review of Service Record by the Finance Branch. After detecting the error of wrong fixation of pay as on 01.11.2003, the applicant’s pay has

been re-fixed again on 01.11.2003 at Rs.6725/- and accordingly, pay has been progressed from time to time and the last pay arrived at Rs.23,880/-. Accordingly, pension and other settlement dues have been paid to the applicant basing on the last pay at Rs.23,880/- and as per rule, the excess pay drawn during his service career has been calculated for Rs.68,505/-.

6. In terms of Rule-15 of Rly. Services (Pension) Rules, 1993, if any excess payment or Government dues have been quantified before retirement, the same can be deducted/adjusted from the employee's D.C.R.G. Accordingly, the excess pay drawn for Rs.68,505/- during his service career has been quantified and recovered from the applicant's total D.C.R.G. amount of Rs.8,15,622/-. After deducting the excess pay drawn for Rs.68,505/- from the total D.C.R.G., the net D.C.R.G. of Rs.7,47,171/- has been passed and paid by the Finance Branch.

In view of the aforesaid rule position, the excess payment drawn during his service career has been recovered from the applicant's D.C.R.G. was in terms of Rule-15 of R.S.P.R' 1993. As such, the applicant's request as made in his representations dt. 15.02.2016 and 30.5.2016 couldn't be considered".

3. Aggrieved with the above, the applicant has again approached this Tribunal in the present O.A. in which he has sought for the following reliefs:

- i) To quash the order of rejection dtd. 31.10.2016 under Annexure-A/7.
- ii) And to direct the Respondents to refund the recovered amount of Rs.68,505/- from the DCRG of the applicant with 12% interest.
- iii) And to direct the respondents to take Rs.24,310/- as last pay, recalculate all the financial benefits and pay the differential financial benefits.
- iv) And pass any other order as deemed fit and proper in the interest of justice.

4. In support of his case, the applicant has mainly relied on the decision of Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih & Ors. According to applicant, since in the speaking order the respondents have disclosed that there was an error occurred while fixing the pay of the

applicant at Rs.6900/- on his promotion to C.B.S.-II in the scale of Rs.5500-8000/- on 01.11.2003, it was obligatory on their part to disclose in detail in the speaking order as to how his pay had wrongly been fixed in order to show that their action is bona fide. Further, the applicant has also called in question the legality of recovery of Rs.68,505/- from his DCRG as violative of the principles of natural justice since no opportunity had been given to him prior to effecting such recovery. He has also pointed out that if at all there has been erroneous fixation of pay, it was not due to any misrepresentation or manipulation of facts by him.

5. Resisting the claim of the applicant, respondents have filed a detailed counter. They have stated that the applicant while working as Head Booking Clerk in the scale of Rs.5000-8000/- was granted an annual increment on 01.03.2003 raising his pay to Rs.6500/-. He was thereafter promoted as Chief Booking Clerk-II in the scale of Rs.5500-9000/- with effect from 01.11.2003, when his pay was wrongly fixed at Rs.6900/- instead of Rs.6725/. He was further promoted as CBC-I in the scale of Rs.9300-34800/- with Grade Pay of Rs.4600/-. The respondents have pointed out that because of wrong fixation of pay in the grade of CBC-II, his pay fixation in higher grade, i.e., CBC-I continued till the retirement of the applicant from railway service on 31.3.2015. It is the case of the respondents that in terms of Rule-15 of Railway Services (Pension) Rules, 1993, if any excess payment or Government dues have been quantified before retirement, the same can be deducted/adjusted from the employees' DCRG. The erroneous fixation of pay having been detected by the Finance Branch, the excess amount to the tune of Rs.68,505/- drawn by the applicant on account of wrong fixation of his pay was deducted from his DCRG and the rest of the amount paid. The

respondents have therefore, prayed that the O.A. being devoid of merit is liable to be dismissed. In the end the Respondents have relied on the decision of this Tribunal in O.A.No.556 of 2016 disposed of on 23.02.2018 to fortify their stand point.

6. Heard the learned counsels for both the sides and perused the records. Admittedly, while fixing the pay of the applicant with effect from 01.11.2003 consequent upon his promotion to CBC-II his pay should have been fixed at Rs.6725/- instead of Rs.6900/-. This gave rise to further commission of wrong on account of fixation of pay on promotion of the applicant as CBC-I in the scale of Rs.9300-34800/- with Grade Pay of Rs.4600/- and resultantly, this error continued till his retirement. However, the facts remain that it was not due to misrepresentation by the applicant such an error in fixation of his pay could come into being. We have also gone through the decision of this Tribunal in O.A.No.556 of 2016 decided on 23.02.2018 as relied on by the respondents in support of their case. We find that the context in which that decision was taken is not applicable to the facts of the present case. In that case applicant while working as Senior Regional Director, Health & Family Welfare Department, there was an overpayment of transport allowance made to the Hospital Doctors to the tune of Rs.5.86 crore and the applicant wanted to quash the audit objection report. The applicant therein to buttress his contention had relied on the decision of the Hon'ble Supreme Court in State of Punjab and Ors. Vs. Rafiq Masih (2015 AIR SCW 501) by virtue of which a restriction was imposed from recovering the excess payment from retired employees. In this connection, the relevant part of the order of this Tribunal in O.A.No. 556 of 2016 reads as follows:

"9. Before parting with this case, I would like to draw the attention of the DoP&T to the letter No.F.No.18/03/2015-

Estt. (Pay)I dated 02.03.2016 regarding recovery of wrongful/excess payment made to Govt. Servant. In this connection, it may be reiterated that the judgment rendered on 18.12.2014 by the Hon'ble Apex Court in the case of State of Punjab & ors. Vs. Rafiq Masih (Whitewasher) and relied on in the circular by the DoP&T cannot override the earlier decision rendered by a co-ordinate Bench of the Hon'ble Apex Court on 17.08.2012 in the case of Chandi Prasad Uniyal & ors. Vs. State of Uttarakhand & Ors. Reported in AIR 2012 SC 2951 in view of of precedential value of earlier decision when two contrary views are available by two co-ordinate Benches. So long the decision rendered in the case of Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. Is not overruled by a larger Bench, the O.M. issued by the DoP&T dated 02.03.2016 based on the decision rendered in the case of State of Punjab & ors. Vs. Rafiq Masih, in my considered opinion, needs further clarification. The DoP&T is to re-examine the legal impact of both the decisions and issue the clarification/appropriate order in regard to recovery of wrongful/excess payment made to Govt. Servants. In case of undue hardship, the matter is different but the government must be very careful about unjust enrichment in terms of crores of rupees of public money due to wrong calculation or incorrect application of governing guidelines and norms.

10. In view of the discussions made above, I find no merit in this OA, which is accordingly dismissed, however, without any order as to costs. Registry is directed to send a copy of this order to the Secretary, Govt. Of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi for necessary examination at their end".

7. The applicant in the instant case is a CBC-I and because of administrative lapse, an amount of Rs.68,505/- has been recovered from his DCRG after his retirement. The recovery relates to the period from 1.11.2003 to 31.3.2015 when the applicant retired from service and the recovery was made after his retirement. There is no averment or document to show that the applicant had given an undertaking in this connection and that show cause notice was issued to him before effecting recovery. As laid down by the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih (supra), a restriction has been imposed on the recovery from retired employees or

employees who are due to retire within one year of the order of recovery. Besides, it is not a case of unjust enrichment since the amount recovered from the DCRG of the applicant is to the tune of Rs.68,505/- on account of wrong fixation of his pay in the year 2003 for which he is in no way responsible.

8. In view of the discussions held above, we quash the order of rejection dated 31.10.2016 (A/7) passed by the Senior Division Personnel Officer, East Coast Railways with a direction to refund the amount to the tune of Rs.68,505/- with a period of 45 days from the date of receipt of this order.

9. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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