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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01055/2017

Thursday, this the 14th day of March, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER**

Shri Verghese C.J.,
Aged 58 years,
S/o C.V.Jacob,
Loco Pilot (Goods),
Southern Railway,
Palakkad Division, Palakkad,
Residing at Chirayath House,
Hemambika Nagar, Olavakkode,
Palakkad.

....Applicant

(By Advocate Mr.U.Balagangadharan)

V e r s u s

1. The Union of India
represented by Secretary,
Railway Board,
New Delhi – 110 001.
2. The General Manager,
Southern Railway Park Town,
Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad – 672 002.
4. The Divisional Railway Manager,
Southern Railway, Palakkad-673 002.

....Respondents

(By Advocate Mr. Millu Dandapani for Respondents)

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This application having been heard on 12th March, 2019, the Tribunal on 14th March, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.1055/2017 is filed by Shri Verghese C.J., Loco Pilot (Goods), Southern Railway, Palakkad against the action of the respondents to recover large sums from his salary on the ground that he had been erroneously fixed a higher pay from 2006 onwards. The reliefs sought in the OA are as follows:

- i) Call for the records leading to Annexure A3 and Annexure A5 and set aside the same.
- ii) Direct the third respondent to resume pay and allowances to the petitioner without any reduction as communicated in Annexure A3;
- iii) Declare that no amount is liable to be recovered from the applicant on the ground of erroneous fixation of pay 11 years back in violation of principles of natural justice; and
- iv) Such other reliefs that the Hon'ble Tribunal deem fit in the facts and circumstances of the case.

2. The applicant had joined service under the respondent organisation as Khalasi on 10.11.1977. By stages, he came to be promoted as Loco Pilot (Shunting) on 11.08.2005, in the then pre-revised scale of Rs.4000-6000, his pay being fixed at Rs.5200/- with effect from 11.11.2005, as per option exercised under Rule 1313 of IREM. The applicant had represented on the ground that a junior of his had been granted a fixation earlier and had sought promotion from 22.04.2005 i.e., the date of promotion of his immediate junior. Once the recommendations of VI Pay Commission were accepted,

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the applicant's pay came to be revised in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 01.01.2006. But due to an error, the applicant claims, his pay came to be revised downwards and fixed at Rs.5200-20200 with Grade Pay of Rs.2400/-. A copy of the revision order is at Annexure A2.

3. Now all of a sudden, by way of notice dated 02.08.2017 , the applicant has been informed that the fixation granted to the applicant consequent to VI Pay Commission and further fixation on 30.03.2006 are erroneous. A copy of the show cause notice is at Annexure A3. From the schedule appended to Annexure A3 the basic pay of the applicant came to be reduced from Rs.11550/- to Rs.11230/- with effect from 03.03.2006. It is pertinent to note that the reduction of pay and consequential recovery is sought to be made in respect of fixation of pay made in the year, 2006 which was 11 years previous to the date of show cause notice. The applicant represented his case to the 3rd Respondent (Annexure A4) and followed it up with a detailed representation on 16.09.2017 (Annexure A6). However, ignoring the representation made by the applicant, the respondents proceeded with recovery of the amount from his pay and allowances from the month of November, 2017 onwards. Now the applicant is on the verge of superannuation and the recovery instituted allegedly for a wrong fixation of pay for which the applicant was not responsible at all, has put him in severe financial difficulties.

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4. The respondents have filed a reply statement wherein they have gone to the extent of pointing out that the earlier fixation had been on account of an error and it had been rectified through the impugned order and recovery subsequently effected. It is stated that the fixation of pay of the applicant on promotion as Loco Pilot (Goods) was erroneously done. The option submitted under Rule 1313 R II(b) would mean that actual fixation in the promoted post of Loco Pilot (Goods) in the scale of Rs.5000-8000 is to be made only after drawing his usual increment in his earlier post of Senior Assistant Loco Pilot in the scale of Rs.4000-6000. Thus the pay was meant to be fixed at Rs.5300/- whereas it was inadvertently fixed at higher stage of Rs.5450/- with effect from 01.11.2005/30.03.2006. It is further argued that the applicant had been put on notice through the show cause notice dated 02.08.2017 at Annexure A3 and he cannot claim that the decision had been arrived at, behind the back. The over payment from 30.03.2006 to 31.07.2017 amounts to a sum of Rs.1,18,509/- and this is not a paltry amount to be ignored.

5. Shri U.Balagangadharan, learned Counsel for the applicant and Shri Millu Dandapani, Standing Counsel for the respondents were heard. All pleadings, both oral and documentary were examined.

6. The applicant is aggrieved on account of recovery from his salary of a substantial amount every month. Respondents have enforced this on the

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ground that his pay on promotion was wrongly fixed in 2006. The respondents became aware of this only in 2017 subsequent to an Audit inspection. Shri Balagangadharan, learned Counsel for the applicant did not pursue the issue whether the re-fixation done in 2017 was correct or not. He confined himself to assailing the recovery from the applicant, who is on the verge of retirement. The recovery also pertains to a period extending over 11 years before the show cause notice.

7. We have considered the case in detail. While we do not challenge the respondents' prerogative to re-fix an employee's salary, if there is an error, we see that the recovery has been ordered after more than a decade from the date of the alleged wrong fixation.

8. The seminal judgment on the question of recovery of sums from employees is the judgment of the Hon'ble Apex Court in **State of Punjab & Ors Vs. Rafiq Masih (White Washer) – 2015 (4) SCC 334**. The said judgment declared as impermissible recovery from employees in the categories noted below:

- (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.

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- (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. As can be seen, the recovery in the instant case relates to a period exceeding a decade and clearly would attract the direction relating to category- iii. Under the circumstances, the OA succeeds, there shall be no recovery from the pay and allowances of the applicant. Whatever sum has so far been recovered from his salary is to be refunded to the applicant within two months on receipt of a copy of this order. However, we also add that future pay/pension will be on the basis of fixation of pay that has been done now. MA No.269/2019 does not survive for consideration. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/01055/2017

1. **Annexure A1:** True copy of the No.539/V/3/Vol.XIV/Loco Pilot (Goods) Gr.II dated 13.03.2006 issued by the Assistant Personnel Officer in the office of the third respondent.
 2. **Annexure A2:** True copy of the revision and consequential correction communicated third respondent as per Letter No.J/P524/V/PR/Vith PC dated 26.06.2009.
 3. **Annexure A3:** True copy of the Show cause notice No.J/P.483/Bills-I dated 02.08.2017 issued by the third respondent with memorandum dated 14.07.2017.
 4. **Annexuren A4:** True copy of the Letter dated 15.08.2017 submitted by the applicant to the third respondent.
 5. **Annexure A5:** True copy of the communication No.J/P.483/Bills-I dated 15.09.2017 of the third respondent enclosing therewith audit inspection report and overpayment worksheet.
 6. **Annexure A6:** True copy of the representation dated 16.09.2017 submitted by the applicant to the second respondent.
 7. **Annexure A7:** True copy of the order dated 12.04.2011 of this Hon'ble Tribunal in OA No.380/2010.
 8. **Annexure R-1(a):** True copy of Pay Slip for the month of March, 2018.
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