IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No. 21/370/2018

Date of Order: 19.03.2019

Between:

A. Sreedhar, S/o. A.C. Narsimha Rao,
Aged about 58 years, Occ: Retd. Senior Section Officer
(Group C Employee), O/o. FA & CAO/SCR/SC,
S.C. Railway, Rail Nilayam, III Floor,
Secunderabad – 500 071.

… Applicant

And

1. Union of India, Rep. by
The General Manager,
South Central Railway, Rail Nilayam, III Floor,
Secunderabad – 500 071.

2. The Financial Advisor & Chief Accounts Officer,
South Central Railway, Rail Nilayam, III Floor,
Secunderabad – 500 071.

3. The Chief Personnel Officer,
South Central Railway, Rail Nilayam, IV Floor,
Secunderabad – 500 071.

4. The Chief Manager,
State Bank of India, Lallaguda Branch,
Lallaguda, Secunderabad – 500 017.

5. The Branch Manager,
State Bank of India, Lallaguda Branch,
Lallaguda, Secunderabad – 500 017.

… Respondents

Counsel for the Applicant … Mr. Mohd. Osman
Counsel for the Respondents … Mr. V. Vinod Kumar, SC for Rlys

CORAM:
Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed challenging the recovery order issued by the second respondent in regard to dearness relief paid to the applicant during the period 14.11.2007 to 31.7.2016.

3. Applicant joined the respondents organisation as Typist on 17.7.1980 and after tendering technical resignation he joined the Rail Tel Corporation of India on 14.11.2007. The applicant was granted pension allowing dearness relief as applicable from time to time. On 3.8.2016 the 4th respondent directed the banker to recover the dearness relief paid to the applicant from 15.11.2007 to 31.7.2016 on grounds that those who joined PSUs after retirement are not eligible for dearness relief. Aggrieved over the same, the OA has been filed.

4. The contentions of the applicant are that his case is fully covered by the judgment of the Hon'ble Supreme Court in Rafiq Masih case. The dearness relief was not paid due to any misrepresentation by the applicant. There was no show cause notice issued to the applicant before recovery was effected. Applicant is a Group C employee and the order of recovery pertains to dearness relief being paid from 1.1.2007 which, in fact, is not permitted by the Railway Board circular RBE 75/2016 dt 19.7.2015. This Tribunal has allowed similar cases in OAs 368, 893, 1308, 1432 of 2013 and in OAs 472, 533, 195 of 2017 as well as in OA 722 of 2014 based on the Rafiq Masih case.

5. Respondents state that the vigilance wing detected that the Rail Tel Corporation has absorbed the applicant in a different scale other than the one for which he is eligible. Respondents claim that this fact was not brought out by the applicant in the OA. As per RBI lr dated 17.3.2016 any excess payment made to

the applicant the concerned bank branch should adjust the excess amount from the outstanding balance in the pensioner's account. The pensioner has also given an undertaking that any excess amount paid can be recovered. The applicant desired speedy recovery and paid Rs.2,73,715/- in one instalment and requested for the balance to be paid in 60 monthly instalments. Respondents are not aware of the representation made to the banker. Recovery is made as per the undertaking given by the applicant. Applicant worked for the accounts wing of the respondents organisation and hence he knows about the rule position governing the issue. The Rafiq Masih case is not applicable to the applicant since it was pronounced on 2.3.2016 whereas the case of the applicant pertains to a period prior to 2016. Further, if mistakes made are not rectified public exchequer will be drained which is not in public interest. Moreover, recovery will not cause any hardship to the applicant. Hon'ble High Court of High Court has stayed the order of this Tribunal in OA 195/2017 in regard to recovery in that case. The respondents assert that once an undertaking is given, recovery can be made as per Hon'ble Apex Court judgment in High Court of Punjab & Harayana v Jagdev Singh in CA 3500 of 2006.

6. Heard both the counsel and perused the documents as well as the material papers placed on record.

7. I) Respondents vigilance wing has detected that excess payment was made to the applicant in regard to dearness relief paid to him during the period 15.11.2007 to 31.7.2016, after he resigned on technical grounds from the respondents organisation. Respondents paid the dearness relief. It was not based on any representation made by the applicant. Hence the question of any misrepresentation by the applicant does not arise. The dearness allowance was paid for a period of nearly 10 years and that too for a mistake committed by the

respondents nearly a decade prior to the issue of the impugned order. Applicant is a Group C employee. Hence the case of the applicant is covered by the Rafiq Masih case wherein it was laid 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:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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."

The case of the applicant is thus covered by clauses (i), (ii) and (iii) of the Hon'ble Supreme Court verdict in Rafiq Masih case in Civil Appeal No. 11527 of 2014.

II) Respondents have cited the Hon'ble Supreme Court Judgment in High Court of Punjab and Haryana & Ors v Jagdev Singh in CA 3500 of 2006 wherein it was held that if the applicant is put on notice then the excess amount paid can be recovered. In this regard it is to be pointed out that in the case of Jagdev Singh, applicant therein was a Group B officer. Applicant in the present OA is a Group C employee and hence the judgment cited by the respondents

does not come to the rescue of the respondents. Besides, in regard to the undertaking being taken from an employee Hon'ble Bombay High Court has observed in W.P no 3128 of 2018 as under:

> "22. We are, therefore, of the view that the recovery of the amount of Rs.1,44,834/- from the Death-Cum-Retirement Gratuity, payable to the Petitioner, a couple of days prior to her retirement was iniquitous and unjustifiable. In our view, the undertaking dated 22nd January, 2018 is of little assistance to the Respondents. Though styled as an undertaking, the said document was, in effect, in the nature of her consent for the recovery from admissible Death-Cum-Retirement Gratuity benefit. Faced with the prospect of either losing out, or inordinate delay in getting the retiral benefit, such consent can hardly be said to be of the Petitioner's own volition and freewill, so as to bind her inexorably. An undertaking obtained by an employer from an employee at the verge of her retirement when the employee has no bargaining power, in our view, would be of no consequence. We are, therefore, inclined to direct that the said amount of Rs.1,44,834/- be refunded to the Petitioner."

The applicant's case is covered by the observation of the Hon'ble High Court cited supra. Taking an undertaking from the employees for covering possible mistakes that could have been committed by the respondents in the past and which when detected later, penalising the employees is not a fair practice. Retired employees out of compulsion often do give undertakings so that the relief due could be obtained without much hassles. In the present case, the undertaking was given to the banker for repaying any excess payments by them. The banker did not make the mistake but the respondents did. Therefore the undertaking given to the banker cannot be invoked. In fact taking an undertaking from retiring employee for possible mistakes that could have been committed by the respondents in the past does indicate the need to improve the relevant operational systems management and manpower work quality. More so, when the respondents organisation being an instrumentality of the State it has to be a model employer as per Hon'ble Supreme Court observation in Secretary, State

Of Karnataka And ... vs Umadevi And Others reported in CA 3595-3612 of 1999.

III) In addition, the pertinent question that demands an answer is as to why the respondents are fighting shy to take action against those who have been appointed only to do the job of disbursing pay and allowances, pension and other financial benefits to the employees. If they make the mistake then it is for them to face it. True to speak, there is an army of personnel maintained by the respondents only for the purpose of dealing with disbursement of pay & allowances, pension and other financial benefits. This Tribunal is in total agreement with the fact that the respondents organisation being a public institution it should not be put to loss. However, the loss sustained should be recouped from those who have committed the mistake of making the excess payment and not from those who in no way are responsible for the mistake and that too after they left the organisation in dignity. If measures are taken to fix responsibility on those who committed the mistake inviting drain on the public exchequer, there will be little scope for the costly mistakes getting repeated. The Tribunal is of the view that it is high time that the respondents need to act from this perspective since in a number of cases it is noticed that the respondents are on slippery ground despite having a large contingent of staff to pay, supervise, inspect and audit payments made to the staff/pensioners. Besides, respondents claim that the applicant would not be put to any financial distress by ordering the recovery. It is not true since the amount involved is Rs.8,73,715/- which is substantial for a Group C employee.

IV) Going a step further, as per Rule 1023 of the Indian Railway Accounts Code (IRAC) - Part-1 which deals with checks to be exercised in regard to pension applications states as under:

> *"The correctness of the emoluments on the first date of the ten months period would naturally depend on the correctness of the emoluments prior to this date. However, any such check of the correctness of past emoluments should not become an occasion for an extensive examination going back into the distant past, the check should be minimum which is absolutely necessary and it should in any case not go back to a period earlier than a maximum of 24 months preceding the retirement."*

Respondents have in effect verified the entries prior to 24 months in the instant case and hence they have violated the statutory provision of Rule 1023 of IRAC.

The above condition in regard to verifying service entries for extending pensionary benefits at the time retirement of an employee only for a period of 24 months prior to the date of retirement, is echoed in Rule 79(b)(v) of RS (Pension) Rules, 1993 as extracted below:

> "79. Stages for the completion of pension papers on superannuation
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> (b) Second Stage.- Making good omission in the service book.-
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> (v) In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments only for the period of twenty-four months preceding the date of retirement of a railway servant, and not for any period prior to that date."

V) Further, the above provision has been reinforced by the Principal Chief Personnel Officer vide his letter dt 17.10.2018. In respect of the applicant it is not even at the time of retirement but nearly 10 years after retirement. Therefore the respondents when they are not permitted to scrutinise entries prior to 24 months before retirement, is it appropriate to examine them after 10 years of retirement. Definitely not, since respondents cannot de hors rules. It is also

surprising to note that the respondents issue circulars but they do not follow them. In fact adopting DOPT OM dt.02.03.2016 which was issued based on Rafiq Masih case, Railway Board concurrently released RBE No. 72/2016 dt. 22.06.2016 mirroring the content of DOPT memo. The same was circulated by the South Central Railway as Serial Circular No. 75/2016. The Railway Board order referred to does not permit the recovery of excess payments of the nature involved in the present OA. Even this order was violated as scribed above. In short the essence of the statutory rules stated above is that financial transactions pertaining to the retired employees are not to be scanned beyond a period of 24 months prior to the date of retirement. Moreover, in the instant case the mistake of paying excess dearness allowance occurred nearly 10 years before the date of retirement of the applicant. Respondents have transcended the prescribed period and thereby acted against statutory rules and instructions circulated by them. Hon'ble Supreme Court in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " *the court cannot de hors rules*". Thus, the action of the respondents in ordering recovery is against their own rules and against the observations of the Hon'ble Supreme Court on the subject.

VI) One more important observation of the Hon'ble Supreme Court in Susheel Kumar Singhal v Pramukh Sachiv Irrigation Department & ors reported in CA 5262 of 2008 is relevant to the issue on hand and hence is extracted here under:

> "7. Upon perusal of GO and the submission made by the learned counsel appearing for the appellant, it is not in dispute the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625 and on the basis of the said salary his pension had been fixed as Rs.9000. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986 i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O dt 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced."

The IRAC Code 1023 and Rule 79(b)(v) of RS (Pension) Rules, 1993 enact the role of the GO referred to in the above judgment. Thus, the action of the respondents violates the observations of Hon'ble Supreme Court cited supra.

VII) It is not out of place to state that respondents in respect of another employee Sri V. Krishna, who worked for the respondents organisation as canteen cleaner, have issued an order dt. 11/12.04.2018 quoting Serial Circular No. 62/2016 as under:

> "..in order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments only for the period of **twenty – four months** preceding the date of retirement or a railway servant, and not for any period prior to that date."

In the said order para 4 of the SC No. 75/2016 which has been issued pursuant to the judgment of the Hon'ble Supreme Court in Rafiq Masih case was referred to and stated that recoveries by the employers would be impermissible in law in situations namely

i) Recoveries from employees belonging to Class III and Class IV service;

ii) Recovery from retired employees who are due to retire within one year of the order of recovery

iii) Recovery from employees, when excess payment has been made for a period in excess of five years, before the order of recovery is issued.

In the said letter, an important observation was made as under:

> "it is evident that SR has to be verified only for the period of last 24 months only prior to the retirement and not before earlier than that. Now, in the instant case, the OP resulted is from 2002 onwards (i.e. 15 years ago) and **recovery will not be in order as per the Sc No. 62/2016 and 75/2016.**
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> Xxxx
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> Now, at this stage, raising query about irregular fixation, done during 2002 may not be in order and will put the employee to financial hardship just before retirement. "

The letter goes on to say that the pay may be revised/ refixed based on verification and certification for the purpose of drawing salary and calculation of settlement dues, but not for the purpose of recovery of over-payment, if any. Further, it is mentioned that excess amount need not be recovered and the waiver of recovery has been approved by the PCPO.

Thus, the respondents have waived recovery in respect of another employee who worked for the respondents organisation like the applicant. Same yardstick has to be followed in respect of the applicant, lest it would amount to discrimination. It is well settled in law that a benefit granted to an employee should be extended to similarly placed persons without a scintilla of doubt.

VIII) A closer look at the case would make it evident that the respondents had ample time to rectify the mistake but it took 10 years for them to identify the mistake committed. Can the applicant be made to suffer for the mistake

committed by the respondents is the moot point to be pondered upon? The answer is once again a definite no. Reason is simple as stated in the Theory of Karma, that one who does the mistake has to reap the consequences of the mistake and not others. There is no concept of sharing of karma which could be good or bad. A modern version of the concept of the theory of karma can be perceived in the observation of the Hon'ble Supreme court :

> In the case of ***Nirmal Chandra Bhattacharjee v. UOI, 1991 Supp (2) SCC 363*** where in Apex Court has held that "The mistake or delay on the part of the department should not be permitted to recoil on the appellants." Further Hon'ble Supreme Court has observed in case of *M.V. Thimmaiah vs. UPSC*, C.A. No. 5883-5991 of 2007 and UOI *vs. Sadhana Khanna*, C.A. No. 8208/01, that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. In the instant case it was the mistake of the respondents and hence they should not make the applicant to suffer.

IX) The applicant did represent to the Chairman, SBI on 20.7.17 which the respondents claim has not been received by them. The applicant retired from the respondents organisation and hence the grievance ought to have been resolved by them. It may not be fair to drive retired employees to other institutions when the cause of the grievance was the decision of the respondents. RBI circular referred to by the applicant does not hold water in the context of the observations made by superior judicial forums cited supra. When such a huge amount is proposed to be recovered, the basic step to be taken is that a notice had to be given to the applicant to explain his version so that a balanced view could be taken by the respondents. By not doing so respondents committed flagrant violation of the Principles of Natural Justice. The legal principle laid down by the Hon'ble Supreme Court is paramount and it has application irrespective of

the time span. Law is uniform to all employees and it cannot be differentiated based on the wing in which the employee worked as claimed by the respondents.

X) Hence, the applicant has made out a case, which fully succeeds. The action of the respondents is against the Principles of Natural Justice, violative of rules and is arbitrary as well as illegal. Therefore, the impugned orders dated 3.8.2016 issued by the 2nd respondent to the 4th respondent and to the DGM of RAILTEL Corpn. are quashed. Consequently the respondents are directed to consider as under:

i) To refund the amount recovered till date from the applicant and stop further recovery, if any, with immediate effect.

ii) Time allowed to refund the amount recovered is three months from the date of receipt of copy of this order.

iii) With the above directions the OA is allowed.

iv) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 19th day of March, 2019

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