

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 020/1211/2018

Reserved on: 27.02.2019

Pronounced on: 11.03.2019

Between:

B.S. Purushotham, S/o. B. Sundara Rajan, Group C,
Aged 61 years, Occ: Ticket Examiner (Retired),
O/o. The Chief Ticket Inspector,
South Central Railway, Tirupati,
R/o. 87/G, Yellappa Reddy Quarters,
R.C. Road, Tirupati, Chittoor District, AP.

... Applicant

And

1. Union of India, rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal Division, Guntakal.
3. The Senior Divisional Financial Manager,
South Central Railway, Guntakal Division, Guntakal.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr.N. Srinatha Rao, SC for Railways

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

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

2. The OA is filed against impugned orders dt.16.10.2018 and 8.12.2017 revising the pay of the applicant and for recovery of Rs.4,30,010/- from the terminal benefits of the applicant.

3. Applicant faced disciplinary action while working as Ticket Collector in the respondents organisation, which, when challenged in OA 1439/2012, penalty imposed was set aside by this Tribunal vide order dt. 1.12.2017. The said order of the Tribunal has been challenged by the respondents before the Honourable High Court in WP 13000/2018 and the same is pending. Consequently, applicant's retiral benefits had to be allowed on the last pay drawn but the respondents revised the pay from 1992 to 2015 and allowed pension/ terminal benefits based on reduced pay of Rs.34,000 instead of Rs.38,300 vide lr dt 8.12.2017 leading to a recovery of Rs.4,30,010 from the settlement dues. Applicant represented on 10.4.2018, 14.5.2018 & 20.8.2018 requesting to restore the benefit of last pay drawn, release recovered amount and pay allied terminal benefits. Respondents did not respond to the representations. However, when a complaint was lodged in Dept. of Public Grievances (DPG) portal, respondents closed the complaint on the ground that proviso 3 & 4 of Rule No.15 of the Railway Services (Pension) Rules 1993 provides for such recovery.

4. The contentions of the applicants are that recovery was ordered without giving notice. Rule 1023 of Indian Railway Accounts Code does not permit checks to be done earlier to 2 years. The amount cannot be shown as railway dues as per Rule 15 of RS (Pension) Rules since the applicant was never issued a notice claiming that the said amount was outstanding due to be recovered from the applicant. Further, recovery is against the orders of the Principal Chief Personnel Officer, South Central Railway dt 17.10.2018 and Railway Board orders RBE No.72 of 2016. The impugned order does not give reasons for the recovery. The case of the applicant is covered by the order of this Tribunal in OA 20/1193 of 2015 and the Hon'ble Supreme Court judgment in Rafiq Masih

case, 2015(4) SCC 334. Recovery ordered brazenly violates Articles 14,16 & 21 of the Constitution of India.

5. Respondents in their reply statement inform that the applicant joined the respondents organisation as ELR Khalasi on 19.9.1982 and later selected as Ticket Collector. While working as Ticket Collector he was charged for taking bribe from a passenger and imposed the penalty of compulsory retirement which had to be rescinded with the intervention of this Tribunal. The Tribunal set aside the penalty and granted all consequential benefits thereof. The order was challenged in the Hon'ble High Court in WP No.13000 of 2018 and it is pending. In the meanwhile, applicant superannuated on 30.11.2017. On his superannuation, while verifying service register of the applicant, it was noticed that the pay of the applicant was wrongly fixed on promotion to Skilled Grade III in the scale of pay of Rs.950-1500, leading to excess payment of Rs.4,30,010 which was ordered to be recovered as per Rule 15 of RS (Pension) Rules, 1993. Applicant was duly issued notice vide lr dt.15.11.2017 for recovery of the excess amount paid. There was no representation by the applicant against the notice. Besides, applicant has misinterpreted proviso 1023 of IRA Code stating that the service book should not be verified at the time of settlement of the employee.

6. Heard both the learned counsel. Perused documents and material papers submitted.

7 I. The core grievance is about recovery of Rs.4,30,010/- from the terminal benefits of the applicant and reduction of pay. Respondents claim that it has been done as per Rule 15 of RS (Pension) Rules, 1993 treating the overpayment of pay and allowances as Railway dues. The overpayment was

made to the applicant when he was promoted to skilled grade III in the pay scale of Rs.950-1500 .

II) Respondents claim that the applicant was given notice vide lr dt 15.11.2017 whereas applicant flatly denies the same. Rebutting the applicant's claim, respondents have not produced any documentary evidence to the effect that it was delivered to the applicant. In the absence of the same, it has to be construed that applicant has not received the notice. It is also seen that there is no reference to the notice in the reply dt. 16.10.2018 given by the respondents in response to the complaint made by the applicant to DPG.

III) Further, statutory 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."

In the case of the applicant, respondents did a check by going back to the distant past of near around 25 years which is prohibited as per cited statutory provision of IRAC. Further, this provision has been reinforced by the Principal Chief Personnel Officer vide his letter dt 17.10.2018. Therefore, the decision of the respondents to reduce the pay of the applicant by re-fixation is against the statutory rule and the executive instruction referred to.

IV) Besides, law in regard to recovery of excess payments has been laid down by Hon'ble Supreme Court in Rafiq Masih case wherein recoveries from Group C employees after retirement and that too, recovery of those

overpayments made prior to 5 years of the order of recovery is impermissible in law. Based on the said judgment of the Hon'ble Supreme court Railway Board has issued orders RBE 72/2016 dt 22.6.2016. Applicant is a Group C retired employee and excess payment was for a period in excess of five years before the date of order of recovery. Thus, the action of the respondents in ordering the recovery infringes the law set by the Hon'ble Supreme Court.

V) In regard to fixation of pay of employees, it needs to be adduced that Accounts Wing has a well defined hierarchy of levels authorised to fix pay so that pay fixed is subjected to multiple checks at different levels before pay is finally fixed and orders issued. In addition, there are mandatory inspections to verify pay and allowances of the employees episodically. Audit wing also does audit this aspect minutely with regular periodicity. Hence with a well established system of checks and counter checks fixing the pay wide of the mark is difficult to appreciate. System is perfect but the men who run the system should be equally perfect. Here comes the problem. If they are negligent erroneous fixation do occur as is seen in the case of the applicant. Therefore all those involved in the incorrect fixation of the pay are equally responsible. Applicant has not misrepresented or misguided the respondents or did he commit a fraud to claim the enhanced pay. It was all the creation of the respondents. In this context, Railway Board order RBE No.72 of 2016 plainly states that excess payments made are to be recovered from those responsible on the basis of negligence. Respondents are silent as to why they have not invoked this clause to make good the loss to the respondents. However, it is up to the respondents to look into this and take action as deemed fit in the matter.

VI) Reverting to provision Rule 15 of RS (Pension) Rules invoked by the respondents to recover the amount treating it as railway due from the

applicant, they need to follow the prescribed procedure under law. A notice has to be issued and based on the reply a decision has to be taken. Simply stating that a notice has been given without producing proof of being acknowledged by the applicant will not help the case of the respondents and that too, when the applicant categorically denied receipt of any such notice in the OA. Respondents have thus failed to follow the rudimentary Principle of Natural Justice of issuing a notice before recovering the excess amount paid. Therefore recovery of amount without issue of notice is *non est* in law.

VII) Even a cursory reading of the Impugned order makes it lucid that justifiable reasons are not given. When a considerable amount is being recovered by re-fixing the pay, it is enjoined upon respondents to issue a well reasoned order so that employees have an opportunity to understand the decision and if aggrieved, represent. The impugned orders even fails the test of reasoning. Therefore, based on the facts discussed supra, respondents' action on both counts i.e. re-fixation of pay and recovery is against rules as well as settled law. The issue is also squarely covered by the decision of this Tribunal in OA 20/1193 of 2015.

VIII) Hence, on merits of the case and as per law the OA fully succeeds. Action of the respondents is against rules, arbitrary and illegal. Impugned orders dated 16.10.2018 and 8.12.2017 are therefore quashed. Consequently respondents are directed to consider as under:

- i) To refund the excess payment of Rs.4,30,010 recovered from the terminal benefits of the applicant.

- ii) To fix and draw pension as per the last pay drawn of Rs.38,300 which was originally fixed and pay arrears of pension along with other eligible terminal benefits due from 1.12.2017 till the date of the payment.
- iii) Time permitted to implement the order is 3 months from the date of receipt of this order.
- iv) OA is allowed as above. There shall be no order as to costs.

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

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 11th day of March, 2019

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