

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

Original Application No. 21/931/2018

**Reserved on: 12.03.2019
Pronounced on: 13.03.2019**

Between:

N. Sesi Devi, W/o.N. Subbarayudu,
Aged 61 years, Retd. Chos, Hyderabad Division,
South Central Railway, F. No. 608,
Saisatya Residency,
Alwal, Near Petrol Pump, Hyderabad.

... Applicant

And

1. Union of India, rep. by
The General Manager,
South Central Railway, Rail Nilayam, 3rd Floor,
Secunderabad- 500 025.
2. The Principal Chief Personnel Officer,
South Central Railway, Rail Nilayam, 4th Floor,
Secunderabad- 500 025.
3. The Chief Personnel Officer (Admn),
South Central Railway, Rail Nilayam, 4th Floor,
Secunderabad- 500 025.
4. Sr. Divisional Personnel Officer,
Hyderabad Division, South Central Railway,
Hyderabad.

... Respondents

Counsel for the Applicant ... Sri G. Trinadha Rao
Counsel for the Respondents ... Sri S.M. Patnaik, SC for Rlys

CORAM:

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

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

2. Applicant is challenging the recovery of Rs.8,82,978/- from terminal benefits by filing this OA.

3. Brief facts of the case are that the applicant voluntarily retired from the respondents organisation in the cadre of Office Supdt. on 1.2.2018 with a pay of Rs.68,000. Hitherto, in a disciplinary case involving the applicant the revising authority has modified the penalty of compulsory retirement to that of reduction to a lower grade as Senior Clerk from Head clerk for a period of 5 years with loss of seniority and pay and the intervening period between compulsory retirement and date of reinstatement was treated as *dies non*. The penalty order did not specify whether the penalty will have an effect on the seniority and increment in the higher service or grade or post on restoration to that higher service, grade or post. On representing about restoration of pay, respondents in Memo dt 3.5.2013 have restored the pay of the applicant on completion of the punishment. Thereafter, applicant's pay was revised periodically as per rules and at the time of her voluntary retirement in Feb.2018 she was drawing a pay of Rs.68,000 per month. However, her terminal benefits were paid by reckoning the last pay drawn as Rs.55,200 instead of Rs.68,000 which also resulted in the pension being fixed as Rs.27,600 instead of Rs.34,000. In addition a sum of Rs.8,82,978 was recovered from Gratuity. Applicant represented on 17.5.2018 and there being no response OA has been filed.

4. Applicant contends that the pay was reduced without issuing notice. Effecting recovery from a retired employee is against the law laid by Hon'ble Apex Court in Rafiq Masih case. Besides, recovery from Gratuity is impermissible under section 60 of CPC. Even the reduction of pay contravenes Rule 79 (b) (v) of RS (Pension) Rules. Respondents inaction on the representation dt 17.5.2018 is contrary to law.

5. *Per contra*, respondents submit that while restoring the pay of the applicant after completion of the period of penalty, pay was erroneously fixed as

Rs. 19,880 instead of Rs.16,850 and as a result the pay she drew at the time of voluntary retirement was Rs.68,000. Noticing this error at the time of applicant's voluntary retirement, pay was re-fixed as Rs.55, 200 and accordingly pension plus terminal benefits were granted. In the process excess amount of Rs.8,82,978 paid was recovered from the terminal benefits. The penalty order of the revising authority clearly states the penalty is 'with loss of Pay'. This aspect was not properly considered at the time of restoration of pay after the currency of the penalty was over. Besides, there is no need to issue notice for any recovery because at the time of retirement the employer has the prerogative to recover any excess amount paid and that this is the normal practice. Continuing their defence, respondents claim that the verdict of the Hon'ble Apex Court in Rafiq Masih case communicated vide RBE 72/2016 does not apply to the instant case since it was not a case of excess payment but was a case of recovery effected due to incorrect fixation of pay.

6. Heard both the counsel and went through the documents along with material papers submitted in detail.

7. The issue revolves around the decision of the respondents in reducing the pay of the applicant and ordering recovery. In this regard there are various rules of the respondents organisation which lay the do's and dont's in taking decision in such matters. It is to be examined as to whether the decision of the respondents is within the ambit of the relevant rules or does it infringe them causing injustice to the applicant. The relevant rules applicable to the case in question are:

I) Primarily 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.”

The pay of the applicant was fixed on restoration vide memo dt 3.5.2013. The respondents have pointed out in 2018 that that there was a mistake in fixing the pay of the applicant ie after five years of the occurrence of the error. IRAC rule 1023 is a statutory provision which stipulates that such checks be confined to only 24 months before the date of retirement. In other words, respondents have to circumscribe their checks upto 2016 and not periods earlier to this year. A statutory provision cannot be overruled by an executive decision. The respondents have thus violated the IRAC provision.

II) The above condition in regard to making good omissions in service book 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
 (b) Second Stage.- Making good omission in the service book.-
 (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.”

Pension rules are also statutory in nature and they cannot be overruled by an executive decision. The executive decision of reducing pay and ordering recovery from the terminal benefits of the applicant by conducting checks for a

period earlier to 24 months prior to the date of retirement is thus invalid. Executive instructions which violate statutory provisions are legally invalid.

III) Now let us look at the penalty order imposed on the applicant by the revision authority. It reads as under:

“Penalty of compulsory retirement imposed by the disciplinary authority and confirmed by the Appellate authority is hereby reduced to that of reduction to lower post from Head clerk in scale of pay of Rs 5000-8000 to Sr Clerk in scale of pay of Rs 4500-7000 with pay of Rs 4500 p.m for a period of 5 years with loss of seniority and pay.”

While issuing a major penalty of reduction to a lower stage, Rule 6 (vi) of RS (DA) Rules states as to how such an order is to be framed. The rule is given below so that statutory requirement and the decision of the respondents can be contrasted so as to assess the real picture in regard to the issue in question

“6. Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

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(vi) Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;”

As can be seen from the above rule, the reduction can be with or without further direction regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service. The revising authority penalty order states that the applicant will be reduced to the rank of Sr Clerk from Head clerk for a period of 5 years with loss of seniority and pay. In other words the penalty is for a period of 5 years only and it is also silent about further directions regarding conditions of restoration in respect of seniority and pay on being restored to the higher post of Head clerk. The obvious conclusion would be that

the revising authority has exercised his discretion to impose a penalty without further directions which is permitted as per rule 6(vi) of RS (DA) rules as inscribed above. Hence the pay of the applicant has to be restored to what she is eligible to draw after the currency of punishment is over. Consequently the memo issued by the respondents re-fixing the pay of the applicant on 3.5.2013 is correct. The respondents are misreading the penalty imposed by the revising authority and hence the emergence of the dispute.

IV) In respect of imposing the penalty of reduction of pay, the Staff Unions of the respondents organisation have represented about improper framing of penalty and to redress the grievance, Railway Board in its order RBE 217 of 2002/ dt 28.11.2002 has clarified as under:

“Where the authority imposing the penalty has not passed any specific directions regarding seniority or pay or both, of the railway servant in the higher grade or post, it will be held that the penalty will have no effect on seniority or increments or both, as the case may be, in the higher grade on restoration of the railway servant to that of higher grade or post as laid down in Board letter dt 22.2.1974 referred to above.”

Therefore, respondents themselves have clarified vide referred order that if the penalty order is silent about further directions in regard to seniority and pay on restoration to the original grade, then the seniority and pay would be restored in the higher grade. Hence the pay of the applicant was correctly fixed after the currency of the penalty was over. There is no error in fixing the pay as claimed by the respondents. From the above it is seen that the respondents have violated their own rules in ordering reduction of pay and consequent recovery of a sizeable amount. Violation of rules has not been taken to kindly by the Hon'ble Supreme court as under.

The Hon'ble Supreme Court observation 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*”

Respondents need to essentially follow rules framed by them. If not they who will? Order in an organisation emerges by adhering to rules. Implementer should follow the rules so that those who are bound by such rules comply with them in letter and spirit. Lest it would amount to placing the cart before the horse. Respondents need to bear in mind the serious observations of Hon'ble Supreme Court in regard to rules. In the present case respondents have flagrantly violated the statutory rule of IRAC provision 1023, Rule 79 (b) (v) of Pension Rules, 6 (vi) of RS (DA) Rules and other instructions issued by them which demonstrably go against the directions of the Hon'ble Supreme Court.

V) Interestingly, respondents in a similar case where pay of an employee by name Sri V.Krishna working for the respondents was reduced and recovery of Rs.1,12,191/- was ordered just before superannuation, the Principal Chief Personnel Officer, quoting Railway Board order lr dt 22.6.2016 wherein conditions laid down in Rafiq Masih case were cited and also by drawing attention to order SC No.62/2016, waived the order of recovery vide his letter dt 11/12.4.2018. The applicant's case is similarly placed and therefore similar treatment has to be given lest it would be discriminative.

VI) In regard to the judgment of Honourable Supreme Court in Rafiq Masih case circulated for implementation vide Railway Board order RBE No.

72/2016 dt 22.6.2016, respondents themselves have followed this judgment in waiving the recovery in the case of the one another similarly placed employee Sri V.Krishna referred to above. The applicant's case in regard to recovery due to re-fixation of pay is a mirror image of that of Sri V.Krishna. The respondents applying the Hon'ble Supreme Court verdict in Rafiq Masih case selectively is not only incorrect but unfair to say the least. It has to be applied uniformly to all the employees if conditions stipulated therein are met. The case of the applicant is that she did not misrepresent nor did she misguide the respondents for refixing the pay which they claim is erroneous. Actually it was not erroneous as was demonstrated in paras supra. Even presuming that it is erroneous, as per Rafiq Masih case, it is impermissible in law to recover excess payment from retired Group C employees. The applicant is a Group C employee. The mistake of the respondents should not turn out to be costly to the applicant. She should not be made to pay for the follies of the respondents if they assume that there was a mistake on their part in restoring the pay of the applicant. It has been held in the case of *Nirmal Chandra Bhattacharjee v. UOI, 1991 Supp (2) SCC 363* wherein the Apex Court has held "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.

VII) The presumed mistake reported is the making of the respondents and hence applicant should not be penalised for the same. The reduction and recovery of pay made from the applicant's pay and terminal benefits would thus violate the observation of the Hon'ble Apex court cited supra.

VIII) One another clear violation that is apparent is that the recovery has been ordered from the gratuity bill of the applicant dt 5.3.2018 annexed as A-6 to the OA. As per section 60 of CPC recovery from Gratuity is not allowed. Hon'ble Supreme court has also observed so in [Calcutta Dock Labour Board v. Sandhya Mitra](#) 1985 I CLR 229 .

VIII) Lastly, the applicant has also cited Hon'ble Supreme Court judgment in Susheel Kumar Singhal v Pramukh Sachiv Irrigation Department & ors reported in CA 5262 of 2008 as 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 aforesigned 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.”

In the present case the IRAC provision 1023 and rule 79 (b) (v) of RS (Pension) Rules 1993 substitute the role of the GO referred to by the Hon'ble Supreme Court in the above cited judgment. Hence the case of the applicant is fully covered by the judgment referred to.

IX) Thus from the aforesaid it is abundantly clear that the pay of the applicant was restored on completion of the penalty period as per rules. There is no ambiguity in this regard. Besides, the statutory provision of IRAC and Rule 79 (b) (v) of RS (Pension) Rules have been violated by the respondents in effecting the reduction of pay and consequently recovering the alleged excess from the terminal benefits. The Hon'ble

Supreme Court Judgments cited squarely cover the case in question.

Applicant has made out a case which fully succeeds. The action of the respondents is arbitrary, discriminative and illegal.

- X) Therefore the respondents are directed to consider as under:
- i) To refix the basic pension of the applicant as Rs.34,000 based on the last pay drawn of Rs.68,000 and pay arrears of pension due thereof, if any, from the date of retirement of the applicant;
 - ii) To pay the terminal benefits based on the last pay drawn of Rs.68,000 and consequential benefits thereof;
 - iii) Refund the sum of Rs.8,82,978/- recovered from Gratuity of the applicant;
 - iv) Time allowed is 3 months from the date of receipt of this order;
 - v) With the above directions the OA is allowed;
 - vi) No order as to costs.

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

Dated, the 13th day of March, 2019

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